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Notice of Approval of Coastal Boundary Survey

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Notice of Public Hearing on Proposed Payment Rates

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**Texas Department of Insurance**
Company Licensing

Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Texas Windstorm Insurance Association, Dwelling and Commercial Policies

**Texas Lottery Commission**
Instant Game Number 1424 "Cowboys"

Instant Game Number 1425 "Houston Texans"

Instant Game Number 1444 "Veterans Cash"

Instant Game Number 1451 "Bonus Word Crossword"

Instant Game Number 1452 "Loteria® Texas"

Instant Game Number 1454 "Bonus Break the Bank"

Instant Game Number 1468 "Nutcracker Cash"

**North Central Texas Council of Governments**
Request for Information for Technology Systems Related to For-Hire Vehicles

Request for Proposals for Web Interface and Smart Phone Applications for Real-Time Casual Carpooling and Managed Lane Lock-In Toll Rate

**Texas Department of Public Safety**
Request for Applications from Local Emergency Planning Committees for Hazardous Materials Emergency Preparedness Grants

**Public Utility Commission of Texas**
Notice of Application for Waiver of Denial of Numbering Resources

Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

**Texas Department of Transportation**
Aviation Division - Request for Proposal for Professional Engineering Services

Public Notice of Draft Environmental Impact Statement - Grand Parkway (SH 99), Segment B

**Texas Water Development Board**
Applications for June 2012
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

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.
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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-1068-GA
Requestor:
The Honorable Rene Oliveira
Chair, Committee on Land and Resource Management
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78711-2910
Re: Authority of the Department of Housing and Community Affairs to adopt a "Qualified Allocation Plan" that uses a criterion not enumerated in section 2306.6710(b), Government Code (RQ-1068-GA)

Briefs requested by July 20, 2012
RQ-1069-GA
Requestor:
The Honorable Craig D. Caldwell
Cherokee County Attorney
Post Office Box 320
Rusk, Texas 75785
Re: Whether the Cherokee County Community Supervision and Corrections Department may prescribe a procedure that permits the issuance of checks without the signature of the county auditor (RQ-1069-GA)

Briefs requested by July 20, 2012
For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.
TRD-201203286
Katherine Cary
General Counsel
Office of the Attorney General
Filed: June 20, 2012

Opinions
Opinion No. GA-0949
The Honorable Rob Eissler
Chair, Committee on Public Education
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910
Re: Whether, under particular circumstances, a school district may, pursuant to section 22.011, Education Code, permit charities to participate in campaigns to solicit contributions (RQ-1031-GA)

SUMMARY
The plain language of section 22.011 of the Education Code does not prohibit school districts from authorizing charitable organizations to solicit donations from employees.

Under section 22.011, a school district may not, directly or through representatives of a charitable campaign, solicit donations during meetings wherein school district employees' attendance is compulsory, instructed, expected, or forced in any manner if the solicitation of charitable donations is a purpose of the meeting. Section 22.011's prohibition applies even if the solicitation of charitable contributions is not the sole purpose of the meeting. If meeting attendance is strictly voluntary, section 22.011 does not prohibit presentations soliciting charitable donations.

Nothing in section 22.011 prohibits charitable donation solicitation materials from being distributed, nor does it prevent district employees from being generally encouraged to participate in a charitable campaign as long as the school district does not make a contribution compulsory, or otherwise instruct, expect, or force an employee either to make--or refrain from making--a contribution in any manner.

To the extent that identifying employee donors could constitute direct or indirect coercion, section 22.011 could be construed to preclude such activity, depending on the facts of the situation.

Opinion No. GA-0950
The Honorable Jane Nelson
Chair, Committee on Health and Human Services
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068
Re: Authority of the Texas Lottery Commission to conduct second-chance drawings and other games via the Internet (RQ-1037-GA)

SUMMARY

ATTORNEY GENERAL    June 29, 2012    37 TexReg 4727
Pursuant to its broad authority under the State Lottery Act and absent prohibition otherwise, it is likely that the Texas Lottery Commission has authority to utilize the Internet in its promotional second-chance drawings for losing tickets.

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

TRD-201203259

Katherine Cary
General Counsel
Office of the Attorney General
Filed: June 20, 2012

♦ ♦ ♦ ♦
TITLE 1. ADMINISTRATION
PART 4. OFFICE OF THE SECRETARY OF STATE
CHAPTER 93. TRADEMARKS

The Office of the Secretary of State will reorganize Chapter 93, concerning trademarks, by proposing the repeal of §§93.1 - 93.6, 93.41 - 93.45, 93.51 - 93.55, 93.61 - 93.69, 93.81, 93.82, 93.91 - 93.94, 93.101 - 93.103, 93.111 - 93.118, 93.131 - 93.134, 93.141, 93.151 - 93.154, 93.161 - 93.164, 93.171, 93.172, and 93.181 - 93.184, while concurrently proposing new §§93.1 - 93.6, 93.11 - 93.15, 93.21 - 93.24, 93.31 - 93.40, 93.51, 93.52, 93.61 - 93.63, 93.71, 93.72, 93.81 - 93.89, 93.91 - 93.94, 93.101, 93.102, 93.111 - 93.115, 93.121 - 93.124, 93.131, 93.132, 93.141 - 93.144, and 93.151. The repeal and replacement of Chapter 93 are proposed to reorganize the chapter, update outdated language, and conform to the statutory revisions to Chapter 16 of the Business & Commerce Code, enacted by the 82nd Legislature, Regular Session, in House Bill 3141, effective September 1, 2012 (hereinafter referred to as "HB 3141").

In addition to the general changes noted above, the following specific changes are proposed:

Section 93.31 of the proposed rules sets forth the application requirements. In accordance with HB 3141, additional applicant information is required, the application must be signed and verified by the applicant and must be accompanied by three specimens of use.

Section 93.32 of the proposed rules sets forth the additional application requirements for applicants seeking to register a mark in two or more classes.

Section 93.33 of the proposed rules sets forth the execution requirements, including providing the form for verification and guidance as to who has authority to sign the application.

Section 93.34 of the proposed rules specifies that the goods and services described in the application must be narrow enough to fall within one class and that if the applicant seeks to register a mark in two or more classes, the application must include a separate description of goods and services for each class.

Section 93.36 of the proposed rules clarifies the requirements for claiming color as an element of the mark.

Section 93.37 of the proposed rules sets forth the requirement that the applicant disclose any prior applications for registration of the mark with the United States Patent and Trademark Office and notes that failure to disclose prior application may result in rejection of the application by the Secretary of State.

Section 93.51 and §93.52 of the proposed rules set forth the requirements of the drawing sheet, including specifications of the actual drawing of the mark.

Section 93.61 and §93.62 of the proposed rules set forth the requirements of the specimens, including the requirement that the application include at least three specimens of use, including at least one specimen per class in which registration is sought.

Section 93.72 of the proposed rules sets forth the procedures for applications containing more classes than what is covered by the fees submitted.

Section 93.82 of the proposed rules sets forth the manner in which the Secretary of State will process concurrent applications for same or similar marks.

Section 93.83 of the proposed rules specifies the period of time that an applicant has to respond to an objection to registration raised by the Secretary of State. The response period is proposed to be increased from 60 days to 90 days.

Section 93.84 of the proposed rules is updated to permit suspension of action by the Secretary of State and to change the response period from 60 days to 90 days.

Section 93.86 of the proposed rules, in accordance with HB 3141, provides that applicant's means of responding to a refusal of registration is limited to bringing an action to compel registration.

Section 93.87 of the proposed rules changes the time period of abandonment from 60 days to 90 days from the date of mailing of an action by an examiner.

Section 93.89 of the proposed rules, in accordance with HB 3141, provides applicant's means of seeking judicial review of the Secretary's registration of a mark or refusal to register a mark.

Section 93.91 of the proposed rules clarifies the circumstances in which an amendment to the application is permissible.

Section 93.101 of the proposed rules specifies that, upon registration, a certificate of registration will be issued. A file-stamped copy of the application will only be returned to the applicant if the application and all supporting materials were submitted in duplicate.

Section 93.102 of the proposed rules sets forth the information to be contained in the certificate of registration. In addition to the other elements required by HB 3141, certificates of registration will contain a reproduction of the mark.

Section 93.113 of the proposed rules specifies the manner for requesting a corrected certificate.
Section 93.114 of the proposed rules sets forth the procedures for correcting a mistake in the record made by the Secretary of State.

Section 93.121 of the proposed rules sets forth the term of registration and renewal, as provided by HB 3141. The period of registration and renewal has been reduced from ten years to five years.

Section 93.122 of the proposed rules sets forth the period of time a registrant has to renew a registered mark. Pursuant to HB 3141, the renewal period begins one year before the expiration of the mark and lasts for six months. However, registrants will also be given a grace period for six months immediately preceding the expiration date of a registration, during which an application for registration may also be submitted.

Section 93.123 of the proposed rules specifies that an application for renewal of a registration must include a verified statement setting forth the goods and/or services in connection with which the mark is being used and that the renewal must include at least one specimen of the mark, per class, as actually used.

Section 93.124 of the proposed rules is updated to change the response time from 60 days to 90 days.

Section 93.131 of the proposed rules is updated to include the requirement that the Secretary of State issue an updated certificate of registration upon the filing of assignment of registration.

Section 93.142 of the proposed rules is updated to provide for the Secretary of State to partially cancel a registration in certain circumstances.

Section 93.143 of the proposed rules is updated to provide the circumstances in which a registered mark may be judicially cancelled.

Section 93.151 of the proposed rules sets forth the recordation fees for trademark filings, as required by HB 3141. The fees will remain consistent with current fees, with the exception of the fee for filing an assignment of registration. The fee for filing an assignment of registration is increased from $10 to $25 to account for the requirement that the Secretary of State issue a new certificate.

FISCAL NOTE

Briana Godbey, Attorney in the Business and Public Filings Division of the Office of the Secretary of State, has determined that for each year of the first five years that the sections are in effect there will be no significant fiscal implications to state or local governments as a result of enforcing or administering the rules as proposed.

PUBLIC BENEFIT AND SMALL BUSINESS COST NOTE

Ms. Godbey has also determined that for each year of the first five years that the sections proposed to be repealed and replaced will be in effect, the public benefit will be increased clarity regarding implementation of the statutory changes effected by HB 3141 and increased guidance on filing a state trademark with the Secretary of State.

Section 16.066 of the Business & Commerce Code requires the Secretary of State to set the required fees by rule. Accordingly, §93.151 of the proposed rules sets forth the recordation fees for filing a state trademark with this office. With the exception of the fee for filing an assignment of registration, the fees remain the same as under prior law. However, pursuant to HB 3141, the term of registration has been reduced from ten years to five years. A review of the approximately 683 trademarks set to expire between December 2011 and May 2012 indicates that only approximately 242 of the marks were actually renewed, and thus just under two-thirds of the registrations were not renewed. This indicates that the majority of marks are not in continual use for ten years. Even so, the marks that are no longer in use are still considered as possible conflicts for determining registration of new marks as long as the registration is still active. Under the reduced five-year registration term, the public will benefit from the more timely verification by the registrant as to which marks are still in use.

The fee for filing an assignment of registration is proposed to be increased from $10 to $25 to account for the new statutory requirement that the Secretary of State issue an amended certificate of registration upon filing an assignment of registration. During the 2011 fiscal year, there were only 66 assignments filed. There are currently 11,199 active trademarks registered with this office. Based on these numbers it is expected that assignments of registration are filed for only about .5% of all registrations.

Registration of a state trademark is entirely optional and does not grant trademark rights. Trademark rights are acquired through actual use, not through the registration process, and are protected through common law enforcement actions. The decision to register a trademark at the state level is discretionary. Any additional costs associated with maintaining a state trademark registration, and thus any potential adverse economic impact on small and micro businesses, should be de minimis and incidental to the decision to register the mark.

COMMENTS

Comments on the proposed repeals and new rules may be submitted in writing to: Briana Godbey, Corporations Section, Office of the Secretary of State, P.O. Box 13697, Austin, Texas 78711-3697 or bgodbey@sos.state.tx.us. Comments must be received no later than 12:00 noon, July 30, 2012.

SUBCHAPTER A. GENERAL INFORMATION AND CORRESPONDENCE

1 TAC §§93.1 - 93.6

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

STATUTORY AUTHORITY

The repeals are proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the proposal.

§93.1. Address.

§93.2. Business To Be Transacted in Writing.

§93.3. Business To Be Conducted with Decorum and Courtesy.

§93.4. Correspondence.

§93.5. Times for Taking Action: Expiration on Saturday, Sunday, or Holiday.

§93.6. Access to Applications.
This 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-201203218
Loma Wassdorf
Director, Business and Public Filings
Office of the Secretary of State

Earliest possible date of adoption: July 29, 2012

For further information, please call: (512) 463-5562

SUBCHAPTER B. REPRESENTATION

1 TAC §§93.41 - 93.45

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

STATUTORY AUTHORITY

The repeals are proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the proposal.

§93.41. Representation by an Attorney.
§93.42. Recognition for Representation.
§93.43. Correspondence with Attorney or Agent.
§93.44. Revocation of Power of Attorney or Authorization of Agent.
§93.45. Representation by Non-Lawyers.

This 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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Loma Wassdorf
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SUBCHAPTER C. APPLICATION FOR REGISTRATION

1 TAC §§93.51 - 93.55

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

STATUTORY AUTHORITY

The repeals are proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the proposal.

§93.51. Date of Receipt.
§93.52. Papers Not Returnable.
§93.53. Fee Not Refundable.
§93.54. Conflicting Pending Applications.
§93.55. Requirements for Receiving a Filing Date.

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

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Loma Wassdorf
Director, Business and Public Filings
Office of the Secretary of State

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SUBCHAPTER D. THE WRITTEN APPLICATION

1 TAC §§93.61 - 93.69

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

STATUTORY AUTHORITY

The repeals are proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the proposal.

§93.61. Application To Be Clear and Legible.
§93.62. Execution Requirements.
§93.63. Description of Goods or Services.
§93.64. Description of Mark.
§93.65. Identification of Prior Registrations.
§93.66. Use by Predecessor or by Related Companies.
§93.67. Proof of Distinctiveness.
§93.68. Service Mark.
§93.69. Olympic Symbols.

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

Filed with the Office of the Secretary of State on June 18, 2012.

PROPOSED RULES   June 29, 2012   37 TexReg 4731
The STATUTORY AUTHORITY

The repeals are proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the proposal.

§93.81. Drawing Required.

§93.82. Requirements for Drawings.

This 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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Lorna Wassdorf
Director, Business and Public Filings
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SUBCHAPTER F. SPECIMENS

1 TAC §§93.91 - 93.94

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

STATUTORY AUTHORITY

The repeals are proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the proposal.

§93.91. Inclusion in Application.

§93.92. Specimens in the Case of a Trademark.

§93.93. Specimens in the Case of a Service Mark.

§93.94. Facsimiles.

This 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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Lorna Wassdorf
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SUBCHAPTER G. CLASSIFICATION

1 TAC §§93.101 - 93.103

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

STATUTORY AUTHORITY

The repeals are proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the proposal.


§93.102. Single Application Coverage.

§93.103. Classification of Computer 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.

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Lorna Wassdorf
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SUBCHAPTER H. EXAMINATION OF AN APPLICATION AND ACTION BY APPLICANTS

1 TAC §§93.111 - 93.118

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

STATUTORY AUTHORITY

The repeals are proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements
of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the proposal.

§93.111. Action by Examiner.
§93.112. Period for Response.
§93.113. Suspension of Action.
§93.114. Exparte Communications.
§93.115. Final Action.
§93.117. Express Abandonment.
§ 93.118. Judicial Review of Final Action of the Secretary of State.
This 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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Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
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For further information, please call: (512) 463-5562

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SUBCHAPTER I. AMENDMENTS

1 TAC §§93.131 - 93.134

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

STATUTORY AUTHORITY

The repeals are proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the proposal.

§93.131. Amendments to Application.
§93.132. Amendments to Description or Drawing.
§93.133. Form of Amendment.
§93.134. Disclaimer by Amendment.
This 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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Lorna Wassdorf
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For further information, please call: (512) 463-5562

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SUBCHAPTER K. CERTIFICATE

1 TAC §§93.151 - 93.154

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

STATUTORY AUTHORITY

The repeals are proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the proposal.

§93.151. Issuance.
§93.152. Correction of Record.
§93.154. Transfer of Ownership or Change of Name.
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on June 18, 2012.
The agencies of the city will adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the proposal.

§93.161. Term of Registrations and Renewals.
§93.162. Renewal Period.
§93.163. Requirements of Application for Renewal.
§93.164. Refusal of Renewal.
This 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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Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Earliest possible date of adoption: July 29, 2012
For further information, please call: (512) 463-5562

SUBCHAPTER M. ASSIGNMENT OF MARKS AND RECORDATION OF OTHER INSTRUMENTS

1 TAC §93.171, §93.172
(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeals are proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the proposal.

§93.171. Requirements for Assignments.
§93.172. Requirements for Recordation of Other Instruments.
This 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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Lorna Wassdorf
Director, Business and Public Filings
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Earliest possible date of adoption: July 29, 2012
For further information, please call: (512) 463-5562

SUBCHAPTER A. GENERAL INFORMATION AND CORRESPONDENCE

1 TAC §§93.1 - 93.6

STATUTORY AUTHORITY

The repeals are proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.
The new rules are proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the proposal.

§93.1. Address.
All letters and other communications relating to trademark matters should be addressed to: Secretary of State of Texas, Business & Public Filings Division, P.O. Box 13697, Austin, Texas 78711-3697. Correspondence is not received on Saturdays, Sundays, or legal holidays.

§93.2. Business To Be Transacted in Writing.
Unless otherwise specifically stated in this chapter, all business should be transacted in writing. The action of the Secretary of State will be based on the written record; no consideration will be given to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

§93.3. Business To Be Conducted with Decorum and Courtesy.
Applicants and their attorneys or agents are required to conduct their business with the Secretary of State with decorum and courtesy. Written complaints against examiners and other employees must be kept separate from any application file.

§93.4. Correspondence.
(a) A letter relating to a trademark application should identify the name of the applicant, the mark, and the reference number appearing on the office action letter.
(b) Each application file should be complete in itself. Although the response submitted for two or more applications may be identical, a separate response should be provided for each application.
(c) A letter relating to a registered trademark should include the name of the registrant, an identification of the mark, the registration number, and the date of registration.

§93.5. Times for Taking Action: Expiration on Saturday, Sunday, or Holiday.
Whenever periods of time are specified in these sections in days, calendar days are intended. When the day, or the last day, fixed by statute or by these sections for taking any action in the Office of the Secretary of State falls on Saturday, Sunday, or on a legal holiday, the action may be taken on the next succeeding day which is not a Saturday, Sunday, or a legal holiday.

§93.6. Access to Applications.
Copies of pending applications and accompanying letters and documents will be available for public inspection. Copies of the papers will be furnished upon paying the appropriate fee.

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

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Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
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For further information, please call: (512) 463-5562

SUBCHAPTER C. SUBMISSION REQUIREMENTS
1 TAC §§93.21 - 93.24

PROPOSED RULES June 29, 2012 37 TexReg 4735
STATUTORY AUTHORITY

The new rules are proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the proposal.

§93.21. Date of Receipt.

(a) An application accompanied by the appropriate fee for at least one class of goods and/or services will be given a date of receipt for purposes of processing by the Secretary of State. The application will be held pending final determination of the mark's registrability by an examiner.

(b) An application delivered without the appropriate fee for at least one class of goods and/or services will not be accorded a date of receipt for purposes of processing and will be returned to sender.

§93.22. Papers Not Returnable.

(a) Applicants should not include confidential information with an application. Any documents containing confidential information will be returned to the sender prior to filing.

(b) After an application is filed the papers will not be returned for any purpose. The Secretary of State will furnish copies to the applicant upon request and payment of the copy cost.

§93.23. Application To Be Clear and Legible.

All documents must be clear and legible, written with black ink on white paper, so that a clear electronic image may be made. The application should be written on only one side of the paper.

§93.24. Requirements for Receiving a Registration Date.

A mark registrable under §16.051 of the Business & Commerce Code will receive a registration date only if each of the following items is received and found to comply with the requirements of the Code and this chapter:

1. The written application for registration that complies with Subchapter D of this chapter (relating to the Written Application);
2. A drawing of the mark that complies with Subchapter E of this chapter (relating to Drawing);
3. At least three specimens of the mark as actually used, that comply with Subchapter F of this chapter (relating to Specimens), including at least one specimen per class; and
4. The application fee for each class of goods and/or services, as required by §93.151 of this title (relating to Recordation Fees).

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

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Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Earliest possible date of adoption: July 29, 2012
For further information, please call: (512) 463-5562

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§93.32. Supplemental Application Requirements for Applicants Seeking to Register a Mark in Two or More Classes.

(a) An applicant seeking to register a mark in two or more classes must comply with §93.31 of this title (relating to Application Requirements). Additionally, the applicant must:

1. clearly and concisely describe the goods and/or services, in each class, on or in connection with which the mark is being used by the applicant at the time of submission of the application;
2. include the dates of use and specimen of use appropriate to each class; and
3. submit an application fee for each class pursuant to §93.151 of this title (relating to Recordation Fees).

(b) The Secretary of State will issue a single certificate of registration that identifies each class in which the mark is registered. If an applicant wishes to obtain separate certificates of registration for one or more classes, the applicant must file a separate application for each class.

§93.33. Execution Requirements.

(a) The application must indicate the date of execution and be signed and verified by the oath or affirmation of an authorized person.

1. The verification shall substantially comply with the following:
   Figure: 1 TAC §93.33(a)(1)
   
   2. In lieu of a verification, the application may include a declaration by an authorized person that complies with §132.001 of the Civil Practice & Remedies Code.
   
   (b) For purposes of this subchapter, a person is authorized to sign an application if:
   
   1. the person has legal authority to bind the owner;
   2. the person has firsthand knowledge of the facts and actual or implied authority to act on behalf of the applicant; or
   3. the person is an attorney who has actual written or verbal power of attorney or an implied power of attorney from the applicant.
   
   (c) A person with legal authority to bind the owner means:
   
   1. in the case of a sole proprietor, the individual that owns the mark;
   2. in the case of a joint venture, a party to the venture;
   3. in the case of a partnership, a general partner;
   4. in the case of a corporation, an authorized corporate officer;
   5. in the case of a limited liability company, an authorized manager, member, or officer;
   6. in the case of an applicant organized in any manner, other than set forth in this subsection, a person that has the authority to legally bind the applicant or registrant under its governing documents.

§93.34. Description of Goods and/or Services.

(a) The application must clearly and concisely identify the goods and/or services on or in connection with which the applicant uses the mark in commerce.

(b) The description of goods and/or services must use common or generic terms or phrases to describe applicant's goods and/or services. Do not include highly technical language or a reference to a federally or state registered mark.

(c) Each description of goods and/or services must be limited to a single class. If the applicant seeks to register a mark in multiple classes, the application must include a separate description of goods and/or services for each class.

(d) An application that contains a description of goods and/or services that is broad or ambiguous enough to fall into more than one class will be rejected. The applicant will be required to more narrowly specify the goods and/or services in connection with which the mark is being used. For example, "publication" is not an acceptable description of goods and/or services because it is not specific enough to identify the goods and/or services with which the mark is being used, e.g., downloadable publications (Class 09), educational publications (Class 16), online publications (Class 41).

§93.35. Description of Mark.

(a) The description should clearly and accurately describe all significant aspects of the mark, including both word and design elements. An element of a mark is considered significant if its addition or deletion would affect the overall commercial impression of the mark.

(b) The description of the mark should not mention colors unless applicant is making a color claim. If color is claimed as a feature of the mark, the description must comply with §93.36 of this title (relating to Color in the Mark).

(c) If the mark includes non-English wording, the description of the mark must include an English translation of that wording.

§93.36. Color in the Mark.

(a) If the mark includes color, the description of the mark must claim color as a feature of the mark and include a color location statement specifying where the color(s) appear on the mark. The color(s) should be described in generic terms rather than by reference to a commercial color identification system.

1. A properly worded color claim would read as follows: "The color(s) [name the color(s)] is/are claimed as a feature of the mark."

2. A properly worded color location statement would read as follows: "The mark consists of [specify the color(s) and literal or design element(s) on which the color(s) appear e.g., a red balloon with a yellow ribbon]."

(b) When color is claimed as part of the mark, the applicant may provide either a color or a black and white drawing sheet. If a color drawing sheet is provided, the colors must match the colors as described in the color location statement.

(c) When color is claimed as part of the mark, at least one specimen per class in which registration of the mark is sought, must be in color and the location of the colors must match the colors as described in the color location statement.

§93.37. Identification of Prior Applications or Registrations with the United States Patent and Trademark Office.

(a) The applicant must disclose any prior applications for registration of the mark, or a portion of the mark, with the United States Patent and Trademark Office (USPTO). If any prior applications for registration have been made by the applicant or applicant’s predecessor, the applicant must provide the following information to the Secretary of State:

1. the filing date and serial number of each application;
(2) the status of any filing; and

(3) if any application was finally refused registration or has not otherwise resulted in the issuance of a registration, the reasons for the refusal or nonissuance.

(b) Applicants may comply with subsection (a) of this section by providing copies of documents issued by the USPTO that include the required information.

(c) Failure to disclose an application for registration with the USPTO that was finally refused or has not otherwise resulted in issuance of a registration may result in the rejection of an application.

§93.38. Use by Predecessor or by Related Companies.

(a) An applicant may assert a date of first use by a predecessor in title, or by a related company, if the use operates to benefit the applicant. The application must include a statement that the first use was by the predecessor in title or by the related company.

(b) If the applicant is not using the mark, but one or more related companies are using the mark, and their use operates to benefit the applicant, the application must indicate this fact.

(c) The trademark examiner may inquire into the relationship and may require appropriate evidence showing that the use by related companies operates to benefit the applicant.


(a) An applicant may seek registration of a mark, otherwise unregistrable by reason of §16.051(a)(5)(A), (B), or (6) of the Business & Commerce Code, which the applicant believes has become distinctive as applied to the applicant’s goods and/or services. To support the claim of distinctiveness the applicant may submit:

(1) evidence of prior registrations with the Secretary of State of the same or similar marks owned by the applicant or applicant’s predecessor in interest;

(2) actual evidence of acquired distinctiveness; or

(3) a sworn statement of the applicant’s substantially exclusive and continuous use of the mark for the five years preceding the date on which the applicant filed its application for registration.

(b) Types of evidence that may be submitted to support a claim of distinctiveness may include sworn affidavits, depositions, or other evidence showing duration, extent, and nature of use of the mark. The applicant also may submit evidence of advertising expenditures made in connection with the mark; the evidence should identify the types of media and should include typical advertisements. Additional evidence may include affidavits, letters, or statements from the trade or public. Sworn statements in the application may, in appropriate cases, be accepted as prima facie evidence of distinctiveness.

(c) After reviewing evidence submitted to support a claim of distinctiveness, the trademark examiner may require further evidence, or may determine that the mark is so generic or highly descriptive as applied to the applicant’s goods and/or services that the mark cannot be registered regardless of the amount of evidence provided.

§93.40. Olympic Symbols.

(a) An application for registration of a mark that uses a symbol, emblem, trademark, trade name, or insignia of the International Olympic Committee or the United States Olympic Committee; or which consists of or includes the words, “Olympic,” “Olympiad,” or “Citius Altius Fortius,” or a combination or simulation of those words must be accompanied by a letter from the United States Olympic Committee consenting to its use as a trademark or service mark and its registration as a trademark or service mark.

(b) Written consent from the United States Olympic Committee for the registration of the mark is not determinative of the issue of registrability under the provisions of §16.051 of the Business & Commerce Code.

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

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SUBCHAPTER E. DRAWING

1 TAC §93.51, §93.52

STATUTORY AUTHORITY

The new rules are proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the proposal.

§93.51. Drawing Required.

(a) The drawing depicts the mark sought to be registered and will be used to reproduce the mark on the registration certificate. The drawing shall be a substantially exact representation of the mark as actually used or in connection with the goods and/or services.

(b) The drawing must be clear and legible and presented on white paper, so that a clear electronic image may be made. An electronic reproduction of the mark will suffice as the drawing, as long as it meets the requirements of this section and §93.52 of this title (relating to Requirements for a Drawing).

(c) The drawing sheet should be no larger than 8 1/2 inches by 11 inches. The actual drawing of the mark must be no larger than 3.15 inches (8 cm) high by 3.15 inches (8 cm) wide.

(d) The drawing must depict only one mark and should be limited to the mark sought to be registered. Matter appearing on the specimens that is not part of the mark should not be placed on the drawing sheet. Purely informational matter such as package contents, contact information, and organizational identifiers are generally not considered part of the mark.

§93.52. Requirements for a Drawing.

(a) Marks that include standard characters: For purposes of this chapter, a “standard character” shall be words, letters, numbers, or any combination thereof without claim to any particular font, style, or color.

(1) If the mark sought to be registered consists of standard characters, those characters shall be typed in capital letters with black ink.

(2) When a mark includes standard characters, those characters shown in the drawing do not have to appear in the exact same
font, style, or color as the specimen of use. However, the Secretary of State will review the mark depicted on the specimen to determine whether the characters are so distinctive as to change the overall commercial impression of the mark.

(b) Marks that include a design element: A mark is considered to contain a design element, if the mark is comprised, in whole or in part, of special characteristics such as a two or three-dimensional design and/or words, letters, or numbers or the combination thereof in a particular font, style, or color.

(c) Marks that include color: If a color is claimed as a feature of the mark pursuant to §93.36 of this title (relating to Color in the Mark), the drawing of the mark may be presented in either color or black and white. If the drawing of the mark is in color, it must match the color(s) described in the color location statement. If color is not claimed as a feature of the mark, any color(s) shown in the drawing sheet will be disregarded.

This 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. SPECIMENS

1 TAC §§93.61 - 93.63

STATUTORY AUTHORITY

The new rules are proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the proposal.

§93.61. Inclusion in Application.

(a) The application must include at least three specimens or examples of use of the mark, including at least one specimen per class in which registration is sought. The specimen must show the mark as it is used on or in connection with the goods and/or services in Texas.

(b) If a specimen supports multiple classes, the applicant should indicate which classes are supported by the specimen.

(c) A specimen which is merely a printer’s proof or reproduction of the drawing submitted to comply with §93.51 of this title (relating to Drawing Required) will not be considered to be a specimen of the mark in use.

§93.62. Requirements for a Specimen.

(a) Marks that include color: If a color is claimed as a feature of the mark pursuant to §93.36 of this title (relating to Color in the Mark), at least one specimen in each class in which registration of the mark is sought must be in color and the location of the colors must match the colors as described in the color location statement.

(b) Trademark specimens: An appropriate specimen for a trademark may include labels, tags, containers, or displays associated with the goods. In the case of goods for which the mark is applied by means of stamp impression or stencil, the specimen may be a representation or impression of the stamp or stencil on a piece of paper. If the nature of the goods makes placement of the mark on the goods impracticable, documents associated with the goods or sale of the goods may be submitted.

(c) Service mark specimens: An appropriate specimen for a service mark shall show the mark as actually used in the sale or advertising of the services. In the case of service marks not used in printed or written form, the Secretary of State may accept audio or video recordings in CD or DVD format, if accompanied by a written transcript of the contents.

§93.63. Photographs as Specimens.

When the manner of use of a mark prevents the applicant from providing actual specimens, the applicant may provide a suitable photograph. The photograph should be no larger than 8 1/2 inches by 11 inches. The photograph should clearly show the mark and the item on which it is used. Matte finish photographs are most suitable for creating an electronic image.

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

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SUBCHAPTER G. CLASSIFICATION

1 TAC §§93.71, §93.72

STATUTORY AUTHORITY

The new rules are proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the proposal.


(a) In accordance with the Business & Commerce Code, §16.065, the Secretary of State uses the international classification of goods and services used by the United States Patent and Trademark Office (USPTO). That classification is set forth in this section. The classification shall not limit or extend an applicant’s rights. The U.S. Acceptable Identification of Goods and Services Manual on the USPTO website may be referenced for a more specific listing of goods and services.

(b) The classes of goods and services are as follows:

(1) Chemicals used in industry, science, and photography, as well as in agriculture, horticulture, and forestry; unprocessed artificial resins, unprocessed plastics; manures; fire extinguishing compo-
sitions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry;

(2) paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers, and artists;

(3) bleaching preparations and other substances for laundry use; cleaning, polishing, scouring, and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices;

(4) industrial oils and greases; lubricants; dust absorbing, wetting, and binding compositions; fuels (including motor spirit) and illuminants; candles and wicks for lighting;

(5) pharmaceutical, veterinary preparations; sanitary preparations for medical purposes; dietetic food and substances adapted for medical or veterinary use, food for babies; dietary supplements for humans and animals; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides;

(6) common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; nonelectric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores;

(7) machines and machine tools, motors (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements other than hand-operated; incubators for eggs; automatic vending machines;

(8) hand tools and implements (hand-operated); cutlery; side arms; razors;

(9) scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signaling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission, or reproduction of sound or images; magnetic data carriers, recording discs, compact discs, DVDs and other digital recording media; mechanisms for coin-operated apparatus; cash registers, calculating machines, and data processing equipment, computers; computer software; fire-extinguishing apparatus;

(10) surgical, medical, dental, and veterinary apparatus and instruments, artificial limbs, eyes, and teeth; orthopedic articles; suture materials;

(11) apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply, and sanitary purposes;

(12) vehicles; apparatus for locomotion by land, air, or water;

(13) firearms; ammunition and projectiles; explosives; fireworks;

(14) precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewelry, precious stones; horological and chronometric instruments;

(15) musical instruments;

(16) paper, cardboard, and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists’ materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); printers’ type; printing blocks;

(17) rubber, gutta-percha, gum, asbestos, mica, and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping, and insulating materials; flexible pipes, not of metal;

(18) leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and traveling bags; umbrellas, parasols, and walking sticks; whips, harness, and saddlery;

(19) building materials (nonmetallic); nonmetallic rigid pipes for building; asphalt, pitch, and bitumen; nonmetallic transportable buildings; monuments, not of metal;

(20) furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, and substitutes for all these materials, or of plastics;

(21) household or kitchen utensils and containers; combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steel wool; unworn or semi-worked glass (except glass used in building); glassware, porcelain, and earthenware not included in other classes;

(22) ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials;

(23) yarns and threads, for textile use;

(24) textiles and textile goods, not included in other classes; bed and table covers;

(25) clothing, footwear, headgear;

(26) lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers;

(27) carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (nontextile);

(28) games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees;

(29) meat, fish, poultry, and game; meat extracts; preserved, dried, and cooked fruits and vegetables; jellies, jams, compotes; eggs, milk, and milk products; edible oils and fats;

(30) coffee, tea, cocoa, and artificial coffee; rice, tapioca, sago; flour and preparations made from cereals; bread, pastry and confectionery, ices; sugar, honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice;

(31) grains, and agricultural, horticultural, and forestry products not included in other classes; living animals; fresh fruits and vegetables; seeds, natural plants, and flowers; foodstuffs for animals; malt;

(32) beers; mineral and aerated waters and other nonalcoholic beverages; fruit beverages and fruit juices; syrups and other preparations for making beverages;

(33) alcoholic beverages (except beers);

(34) tobacco; smokers’ articles; matches;

(35) advertising; business management; business administration; office functions;
(36) insurance; financial affairs; monetary affairs; real estate affairs;
(37) building construction; repair; installation services;
(38) telecommunications;
(39) transport; packaging and storage of goods; travel arrangement;
(40) treatment of materials;
(41) education; providing training; entertainment; sporting and cultural activities;
(42) scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software;
(43) services for providing food and drink; temporary accommodation;
(44) medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture, and forestry services; and
(45) legal services; security services for the protection of property and individuals; personal and social services rendered by others to meet the needs of individuals.

§93.72 Identification of Goods and/or Services
(a) The application must identify the goods and/or services in connection with which the mark is being used. A single class application may state that the mark is in use with any number of goods and/or services contained within one class. If the goods and/or services identified on the application fall within two or more classes, the application must comply with §93.32 of this title (relating to Supplemental Application Requirements for Applicants Seeking to Register a Mark in Two or More Classes).
(b) Classification is the basis for determining the fees that must be paid. If the application sets forth goods and/or services in more than one class and submits insufficient fees to cover all the classes, the applicant must either amend the application to restrict the goods and/or services to the number of classes for which the fee has been paid, or submit additional payment to cover each class set forth in the identification of goods and/or services.

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SUBCHAPTER H. EXAMINATION OF AN APPLICATION AND ACTION BY APPLICANT

1 TAC §§93.81 - 93.89

STATUTORY AUTHORITY

The new rules are proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the proposal.

§93.81 Action by Examiner
(a) Upon receiving an application for registration and payment of the application fee for at least one class, a trademark examiner will examine an application for registration.
(b) Applications will be examined in the order in which they are received, including applications concurrently processed for registration of the same or confusingly similar marks used in connection with the same or similar goods and/or services.
(c) The applicant will be notified in writing of any formal requirements or objections to the application for registration.
(d) An examiner may require the applicant to furnish any information and exhibits reasonably necessary to the proper examination of the application.

§93.82 Concurrent Applications for Same or Similar Mark
(a) When concurrently processing applications for marks that are likely to cause confusion or mistake, when applied to the applicant's goods and/or services, the Secretary of State will give priority to the application with the earliest date of receipt, as determined by §93.21 of this title (relating to Date of Receipt). Applications for the same or similar mark that have a later date of receipt will be cited to the conflicting pending application. The application will be held pending until the Secretary of State makes a final determination regarding the registration of the prior received application.
(b) When applications have the same date of receipt, pursuant to §93.21 of this title, the application with the later date of execution will be held pending a final determination of the application with the earlier date of execution. An application that does not specify a date of execution will be presumed to have been executed no earlier than:

1. its postmark date, if mailed; or
2. its date of receipt, if delivered by other means;
(c) When applications have the same date of receipt and the same date of execution, the trademark examiner will give priority to the application stating the earliest date of first use in this state.

§93.83 Period for Response
A written response must be received by the Secretary of State within 90 days from the date of mailing of any action by an examiner. The response may be made with or without amendment and include proper action by the applicant as the nature of the action and the case may require.

§93.84 Suspension of Action
(a) Action may be taken by the Secretary of State to suspend a pending application for good and sufficient cause, including a pending proceeding before the United States Patent and Trademark Office (USPTO) or a court which is relevant to the issue of registrability of the applicant's mark. An application suspended by the Secretary of State will be reviewed for any substantive defects and then suspended for a reasonable amount of time, but not longer than six months. The applicant will be notified in writing of the reason for the suspension. The Secretary may suspend the application for additional six-month periods by notifying the applicant in writing.
(b) On written request of the applicant, the Secretary of State may suspend action for a period of up to six months, if a proceeding
is pending before the USPTO or a court which is relevant to the issue of registrability of the applicant's mark. An applicant's written request for a suspension of action under this section filed within the 90-day response period may be considered responsive to an examiner's action.

(c) The request should include the following information:

(1) an identification of the application;
(2) a statement that the applicant requests suspension of the trademark examination process;
(3) an identification of the pending proceeding including the name of the court, file name, and cause number; and
(4) a brief statement of the relevance of the pending proceeding to the application before the trademark examiner.

d) No later than upon request for suspension, the applicant should address all objections to registration other than those on which the suspension is based.

e) The trademark examiner shall send written notice of the acceptance or rejection of the request to the applicant. If the examiner accepts the request, the examiner shall make appropriate notations on the application file.

(f) The applicant shall notify the Secretary of State within 20 days of the resolution of any proceeding.

(g) If the proceeding remains pending at the end of the initial, or any subsequent suspension period, the applicant shall provide written notice of this fact to the Secretary of State. The Secretary of State may suspend action for additional periods of up to six months. If the applicant does not provide notice by the end of the initial or any subsequent suspension period, the application will be deemed abandoned.

§93.85. Third Party Communications.

(a) Except as otherwise provided in subsection (b) of this section, action of the Secretary of State will be based upon the written record developed by the applicant and the trademark examiner. Communications from third parties in opposition to the registration of a pending application which are adversarial in nature are inappropriate and will not be considered part of the record by the trademark examiner. Objections to registration of this nature should be resolved judicially pursuant to §16.104, Business & Commerce Code.

(b) Communication from a third party which brings to the attention of the Secretary of State facts or information bearing upon the registrability of the mark because of the generic or descriptive nature of the mark may be made part of the record for consideration along with all other facts available to the examiner. Before any of the factual information can be made part of the record, the communication must be in writing and contain proof and support of the information provided.

§93.86. Final Action.

When a refusal of registration is stated to be a final action, the applicant's response is limited to bringing an action to compel registration pursuant to the Business & Commerce Code, §16.106.

§93.87. Abandonment.

If within 90 days of the date of mailing of an action by an examiner, an applicant fails to respond or fails to respond completely, the application will be deemed abandoned. After an application has been abandoned, the applicant may submit a new application and fee.

§93.88. Express Abandonment.

An applicant may expressly abandon an application during the course of the examination process by executing and submitting a written abandonment with the Secretary of State.

§93.89. Judicial Review of Final Action of the Secretary of State.

(a) A final action or final decision of the Secretary of State may be judicially reviewed pursuant to §16.057 of the Business & Commerce Code. An applicant or registrant may seek judicial review of the refusal of the Secretary of State to register a trademark or renew the registration of a trademark by seeking a writ of mandamus in a district court of Travis County, pursuant to §16.106 of the Business & Commerce Code.

(b) A person seeking cancellation of a trademark registered by the Secretary of State may bring suit in a district court in Travis County to cancel the registration pursuant to §16.106 of the Business & Commerce Code.

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§1 TAC §§93.91 - 93.94

STATUTORY AUTHORITY

The new rules are proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the proposal.

§93.91. Amendments to Application.

(a) The applicant may amend the application, as required, to correct informalities, to avoid objections, or at the request of the Secretary of State.

(b) The identification of goods and/or services may be amended to clarify or limit, but not to broaden, the stated goods and/or services.

(c) If the verification or declaration is executed by the wrong party, the applicant may submit a substitute verification or declaration.

(d) The dates of use may be amended, provided that the applicant does not amend the application to include a date of use that is subsequent to the date of receipt of the application.

(e) The name of the applicant may be amended if incorrectly stated in the application, but the application may not be amended to include a different applicant.

§93.92. Amendments to Description or Drawing.

The trademark examiner will permit amendments to the description or drawing of the mark only if warranted by the specimens or facsimiles as originally filed. Amendments to the description or drawing supported by additional specimens may require an additional statement signed by
§93.93. Form of Amendment.

(a) In every amendment the applicant must indicate the exact word or words to be stricken from or inserted in the application. The applicant must indicate precisely where the insertion or deletion is to occur. Additions or insertions on the application must be made by the applicant, applicant's agent, or attorney.

(b) An examiner may require the applicant to rewrite the entire application if the number or nature of amendments makes it difficult to consider the application. The examiner also may require the entire application to be rewritten to clarify the record.

§93.94. Disclaimer by Amendment.

(a) An examiner may require a disclaimer of any unregistrable component (such as descriptive words, abbreviations, names, symbols, terms, slogans, or elements) of a mark otherwise registrable.

(b) An applicant may voluntarily disclaim a component of a mark sought to be registered.

(c) An applicant's failure to comply with a request for disclaimer is sufficient basis for a final action denying 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.

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SUBCHAPTER J. ALLOWANCE OF REGISTRATION

1 TAC §93.101, §93.102

STATUTORY AUTHORITY

The new rules are proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the proposal.

§93.101. Registration.

(a) If an examiner determines that all requirements have been met and the application is in condition for registration, the examiner will issue a certificate of registration to the applicant. The applicant will only receive a file-stamped copy of the application if the application and all supporting material, were submitted in duplicate.

(b) The date of filing will be the date of receipt for examination, or the date of last receipt for reexamination. The date of filing may not be a date before the date on which the application is found to conform to law.

§93.102. Certificate.

When an application has been found to comply with Chapter 16 of the Business & Commerce Code, a certificate will be issued. The certificate will be under the signature and official seal of the Secretary of State and will include:

1. the name and business address of the person claiming ownership of the mark;

2. the applicant's organizational form and state of formation, if applicant is organized as an entity;

3. the names of the general partners, if applicant is organized as a partnership;

4. a description of any word element of the mark;

5. a color claim and color location statement, if any;

6. a description of the goods and/or services on or in connection with which the mark is being used;

7. a statement of each class of goods and/or services in which the mark is registered;

8. for each class, the date claimed for the first use of the mark anywhere;

9. for each class, the date claimed for the first use of the mark in Texas;

10. a black and white reproduction of the mark;

11. the registration date; and

12. the term of the registration.

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SUBCHAPTER K. CORRECTIONS

1 TAC §§93.111 - 93.115

STATUTORY AUTHORITY

The new rules are proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the proposal.

§93.111. Correction of Mistake by Owner.

(a) If a registrant incorrectly sets forth its name, business address, organizational structure, state of organization, or name of general partners in the original application for registration or application for renewal of registration, the registrant may provide evidence of such
mistake or error in execution and request that the record regarding the registered trademark be corrected. If the Secretary of State determines that the proposed correction is not a change in the identity or organizational form of the registrant or a change of ownership, but is merely a correction of a drafting error by the registrant, the Secretary may file the request and update its computer records accordingly.

(b) The Secretary of State records may be corrected to change the identification of goods and/or services relating to an active trademark or service mark registration to delete from that identification the registered word mark of another party. The notice of correction must be signed by the registrant and must set forth the following information:

(1) the name and address of the registrant;
(2) an identification of the trademark and its certificate of registration number;
(3) the term(s) to be deleted from the identification of goods and/or services; and
(4) the generic term(s) or phrase to be used in place of the deleted term(s). Upon receipt of the notice of correction, the Secretary of State will file the notice and place the notice on record, update its computer records accordingly, and send a letter of acknowledgment to the registrant. A duplicate "file stamped" copy of the notice of correction will accompany the letter of acknowledgment, provided that a duplicate copy of the notice is provided for such purpose.

(c) If the records of the Secretary of State clearly disclose a material mistake in a certificate of registration, including a mistake relating to the classification of goods and/or services, the Secretary, pursuant to §93.113 of this title (relating to Issuance of a Corrected Certificate), will issue a corrected certificate of registration, upon the registrant's request.

§93.112. Change of Address.

Upon written notification by the registrant, the Secretary of State shall change a registrant's business address. Upon submitting the notice of an address change, the registrant may request a new certificate of registration pursuant to §93.113 of this title (relating to Issuance of a Corrected Certificate).


(a) A registrant, or registrant's authorized representative, may request a corrected certificate of registration by submitting the following to the Secretary of State:

(1) the required fee; and
(2) its original certificate of registration; or
(3) a statement that the certificate of registration has been lost, misplaced, or destroyed.

(b) This subsection also applies to certificates issued upon renewal, transfer of ownership, change of name, or assignment.

§93.114. Correction of Office Mistake.

If the Secretary of State makes a material mistake when recording pertinent information about a registration, the Secretary, upon receiving notice of the mistake, will update the computer records accordingly. In its discretion, the Secretary may also issue a new certificate of registration without charge.

§93.115. Transfer of Ownership or Change of Name.

(a) In the case of a transfer of ownership or a change of name of the registrant which does not constitute an assignment, a new certificate of registration for the remainder of the unexpired term of a mark's registration may, upon request, be issued in the new name or in the name of the transferee, if the instrument evidencing the transfer of ownership or change of name has been recorded pursuant to §16.062, Business & Commerce Code.

(b) A request for a new certificate under this section must comply with §93.113 of this title (relating to Issuance of a Corrected Certificate) and must be signed by the registrant or transferee or an agent of the registrant or transferee.

This 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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Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
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For further information, please call: (512) 463-5562

SUBCHAPTER L. TERM AND RENEWAL
1 TAC §§93.121 - 93.124

STATUTORY AUTHORITY

The new rules are proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the proposal.

§93.121. Term of Registrations and Renewals.

Unless cancelled in accordance with the Business & Commerce Code, Chapter 16, or these sections, a registration remains in force for five years, and may be renewed for additional terms of five years.

§93.122. Renewal Period.

(a) The renewal period for a registered mark begins one year before the expiration date of the current registration and lasts for six months.

(b) If not submitted during the renewal period, an application for renewal will be considered timely if received during the six-month grace period immediately preceding the expiration date of the current registration.

(c) An application for renewal may only be submitted during the renewal period or during the six-month grace period. An application for renewal submitted before the renewal period begins or after the current term of registration of the mark expires will be rejected.

§93.123. Requirements of Application for Renewal.

An application for renewal of registration must include the following items:

(1) a verified statement setting forth the goods and/or services recited in the current registration on or in connection with which the mark is still in use in Texas. If the renewal application covers less
than all the goods and/or services in the current registration, a list of the particular goods and/or services to be renewed; and

(2) at least one specimen of the mark, per class, as actually used; and

(3) the renewal fee for each class of goods and/or services, as required by §93.131 of this title (relating to Recodaration Fees).

§93.124. Refusal of Renewal.

(a) If the application for renewal is incomplete or defective, the renewal will be refused. The application may be completed or amended in response to a refusal.

(b) If the application for renewal is refused, the response to an action by the examiner must be received within 90 days from the date of mailing of an action by the examiner and before the registration expires. If the renewal cannot be filed before the registration expires, a new registration must be made.

This 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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Loma Wassdorff
Director, Business and Public Filings
Office of the Secretary of State
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For further information, please call: (512) 463-5562

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SUBCHAPTER M. ASSIGNMENT OF MARKS AND RECODARATION OF OTHER INSTRUMENTS

1 TAC §93.131, §93.132

STATUTORY AUTHORITY

The new rules are proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the proposal.

§93.131. Requirements for Assignments.

(a) Assignments of registered marks may be recorded with the Secretary of State. An assignment may be recorded if it meets the following requirements:

(1) it is a written instrument executed by the registrant (assignor);

(2) it identifies the certificate of registration by registration number and date of registration (this information may be submitted as a separate statement if it is not contained within the assignment document);

(3) it is in English or, if not in English, it is accompanied by a translation signed by the translator; and

(4) it contains the name and address of the assignee (this information may be submitted as a separate statement if it is not contained within the assignment document).

(b) The original or a copy of the assignment should be submitted with the filing fee to the Secretary of State.

(c) Upon compliance with provisions of this section, the Secretary of State will issue a certificate of registration issued in the assignee's name for the remainder of the mark's term of registration, or the remainder of the mark's last term of renewal.

§93.132. Requirements for Recodaration of Other Instruments.

(a) An instrument relating to the transfer of ownership of a mark or pending application (such as a certificate of merger or conversion) or a document effecting a name change (other than a change of entity) may be recorded with the Secretary of State. Each document may be recorded if it meets the following requirements:

(1) it is an instrument authorized by law to be recorded or filed and in fact is recorded or filed in a public office and the copy of the instrument is certified by the appropriate official or authority;

(2) the instrument is not authorized by law to be recorded or filed, but is the type of instrument which would be recorded and filed in the records of the Secretary of State if the business entity were a corporation;

(3) the certified copy of the instrument is in English or, if not in English, it is accompanied by a translation signed by the translator; and

(4) the certified copy is accompanied by a cover sheet, signed by the registrant or transferee or an agent of the registrant or transferee, which includes the following information:

(A) an identification of the mark, including the certificate of registration number and date of registration;

(B) the name of the registrant/transferor conveying the interest and the name and address of the transferee receiving the interest; and

(C) a concise description of the transaction being recorded.

(b) The certified copy of the instrument and accompanying cover sheet should be submitted with the filing fee to the Secretary of State. A corporation or other business entity which has filed the instrument to be recorded with the Corporations Section of the Secretary of State may provide an additional statement on the cover sheet identifying the instrument filed and the date of its filing with the Secretary of State in lieu of a certified copy of the instrument.

(c) Upon compliance with the provisions of this section, the Secretary of State shall file the instrument, and return a filed stamped copy if a duplicate copy was provided for such purpose.

(d) Upon written request of the registrant or transferee, or an agent of the registrant or transferee, the Secretary of State will send the registrant or transferee a new certificate of registration issued in the registrant's new name or in the transferee's name for the remainder of the mark's term of registration, or the remainder of the mark's last term of renewal. The request for the new certificate must be accompanied by the fee established for a new or corrected certification pursuant to §93.151 of this title (relating to Recodaration 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.
SUBCHAPTER N. CANCELLATION OF REGISTRATION

1 TAC §§93.141 - 93.144

STATUTORY AUTHORITY

The new rules are proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the proposal.

§93.141. Voluntary Cancellation.

(a) The Secretary of State may cancel a registration upon receipt of a sworn request in writing for cancellation executed by the registrant or registrant’s assignee of record. The request must include the following:

(1) the mark to be cancelled, registration number, and date registered;

(2) the name and address of the registrant; and

(3) a statement as to the classes sought to be cancelled, or if registrant seeks to cancel the registration in its entirety, a statement to that effect.

(b) The request for cancellation should be accompanied by:

(1) the certificate of registration; or

(2) the registrant’s statement that the certificate has been lost.

(c) If fewer than all classes are cancelled, the Secretary of State will update the computer records to reflect the classes cancelled. A correct certificate of registration is available upon request by complying with §93.113 of this title (relating to Issuance of a Corrected Certificate).

§93.142. Administrative Cancellation.

(a) The Secretary of State shall cancel a registration upon:

(1) finding that the registration was granted under Chapter 16 and was not renewed under Business & Commerce Code, §16.059;

(2) receipt of a request for a cancellation of a mark in its entirety, pursuant to §93.141 of this title (relating to Voluntary Cancellation); or

(3) receipt of a cancellation pursuant to §93.143 of this title (relating to Judicial Cancellation).

(b) The Secretary of State may partially cancel a registration upon:

(1) receipt of a request for cancellation of a mark in fewer than all the registered classes, pursuant to §93.141 of this title; or

(2) proof that registrant of a mark, found by a court to be likely to cause confusion with a mark previously registered, holds a concurrent registration for the mark with the United States Patent and Trademark Office covering a portion of this state. In this situation, the mark may be cancelled only as to the portion of the state not covered by the USPTO registration.

§93.143. Judicial Cancellation.

(a) The Secretary of State is not a necessary party to any action or proceeding for the cancellation of a trademark registered by the Secretary of State. The Secretary of State will cancel a trademark registration upon receipt of a certified copy of a final judgment brought by a district or appellate court or other court of competent jurisdiction canceling the trademark or finding that:

(1) the registered mark has been abandoned;

(2) the registrant is not the owner of the mark;

(3) the registration was granted improperly;

(4) the registration was obtained fraudulently;

(5) the registered mark is or has become the generic name for the goods and/or services, or part of the goods and/or services, in connection with which the mark was registered; or

(6) the registered mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a mark that:

(A) is registered by another person in the United States Patent and Trademark Office before the date the application for registration was filed under Chapter 16 of the Business & Commerce Code; and

(B) is not abandoned.

(b) There is no fee for the filing of a judicial cancellation of a trademark registration.

§93.144. Revocation of Registration, Renewal, Assignment or Recordation.

The Secretary of State may revoke the filing of an application for registration, renewal of registration, or an assignment or other instrument recorded in the trademark records of the Secretary of State if the fee for the document was paid by an instrument or credit card that was dishonored when presented by the state for payment. The Secretary of State will mail notice of the revocation of the filing to the business address of the registrant or the registrant’s agent. A revocation is effective as of the date of the filing of the document. Failure to give or receive notice does not invalidate the revocation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.
1 TAC §93.151

STATUTORY AUTHORITY

The new rule is proposed under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the proposal.

§93.151. Recordation Fees.

(a) The Secretary of State requires the following processing fees.

(1) Application for registration, per class—$50.
(2) Application for renewal of a trademark registration, per class—$25.
(3) Assignment of registration—$25.
(4) Transfer of ownership/change in registrant or applicant name—$10.
(5) Recording of other instruments—$10.
(6) Change of registrant address—no fee.
(7) Voluntary cancellation of registration—no fee.
(8) Issuance of a new or corrected certificate of registration—$15.

(b) The fee accompanying each trademark application, renewal, or assignment is not refundable, regardless of whether the application, renewal, or assignment is subsequently approved, rejected, or abandoned.

This 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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Lorna Wassdorf
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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 11. GENERAL ADMINISTRATION

1 TAC §354.1133

The Texas Health and Human Services Commission (HHSC) proposes new §354.1133, concerning parental accompaniment requirement for the Medical Transportation Program (MTP) and Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services. The new rule clarifies and confirms HHSC’s policy requiring a parent, a guardian, or another adult authorized by a parent or guardian to accompany a child who receives an EPSDT (known in Texas as Texas Health Steps) service pursuant to 25 TAC Chapter 33 or who receives a service or benefit provided by MTP operated pursuant to 1 TAC Chapter 380. The proposed rule clarifies and conforms provider practices to HHSC’s long-standing policies of promoting program integrity, ensuring the safety of children receiving services, and encouraging parental involvement in the care of the child. The proposed rule will supplement or supersede current rules governing parental accompaniment set out in 1 TAC §380.207, which sets out program limitations in MTP, and 25 TAC §33.2 and §33.6, which set out requirements for EPSDT services.

The proposed rule clarifies which individuals may be deemed “another adult” authorized by a parent or guardian to accompany a child to an EPSDT visit or screening or on a MTP service. The phrase “another adult” is not defined in §32.024(s), Human Resources Code. Under the proposed rule, “another adult” may be a person who is enumerated in §32.001(a), Family Code, as a person who is authorized to make medical decisions for a child in the absence of a parent or guardian, but “another adult” cannot be a provider of Medicaid services or be employed by or affiliated with a provider of Medicaid services for which reimbursement is sought.

The proposed rule ensures that the policies governing both EPSDT and MTP are consistent. It also ensures that the rule governing the EPSDT program is consistent with legislative intent. The proposed rule promotes the safety and well-being of children receiving MTP services or benefits, consistent with the authority conferred on HHSC by §531.0241(e) of the Government Code. And the proposed rule ensures that the long-standing policies of HHSC are followed by Medicaid providers and those responsible for the care of children receiving services.

BACKGROUND AND JUSTIFICATION

The new rule is proposed as a result of HHSC staffs discovery that the practices of some providers in the state are not in conformity with the provisions of state law, agency rule, and long-standing agency policy governing parental accompaniment of children under the age of 15. Specifically, HHSC has determined that some EPSDT providers or their employees were accompanying children on trips furnished by MTP and performing EPSDT services without a parent or guardian present. Among the reasons offered to justify these practices is the inability of parents to take time off during the work day to attend an EPSDT visit or screening and the lack of service opportunities being provided at times more convenient to the parent. Also, there is an apparent lack of awareness that some therapy services can be provided in the Medicaid recipient’s home. As noted below, these practices are inconsistent with the legislative intent in enacting §32.024(s) of the Human Resources Code.

The proposed rule will ensure consistency in the delivery of EPSDT and MTP services and will ensure that parents or guardians may designate another adult to accompany the child, including those persons enumerated in §32.001(a), Family Code, who may make medical decisions for a child in the absence of a parent or guardian A parent or guardian may not, however, designate as an authorized adult a Medicaid service
provider or a person who is employed by or affiliated with a Medicaid service provider for which reimbursement is sought.

A. Services provided in EPSDT program

The proposed rule is authorized in part by and is intended to implement §32.024(s)(2), Human Resources Code, which requires either a parent, guardian, or "another adult, including an adult related to the child, authorized by the child's parent or guardian, to accompany the child" to an EPSDT visit or screening as a condition for reimbursement. Human Resources Code, §32.024(s). HHSC has construed the phrase "another adult" to include a person enumerated in §32.001(a), Family Code, which lists persons who are authorized to make medical decisions for a child in the absence of a parent or guardian. HHSC has also construed the phrase to exclude a provider of EPSDT services or someone employed by or affiliated with a provider of EPSDT services for which reimbursement is sought.

1. Provider is not included in phrase "another adult"

Section 32.024(s), Human Resources Code, was enacted by House Bill (HB) 1285 during the 76th Legislative Session in 1999. The bill as filed did not include the phrase "another adult" set out in Subdivision (2); the phrase was added as part of a house committee substitute for the bill. The "Background and Purpose" section of the Bill Analysis for the enrolled version of the bill and the House Research Organization bill analysis of the engrossed version of the bill makes it clear that the principal purposes of the bill were to prevent possible provider fraud and to promote parental involvement in making medical decisions regarding health care for children enrolled in the EPSDT program. See House Comm. on Public Health, Bill Analysis, Texas HB 1285, 76th Leg., R.S. (1999); House Research Organization, Bill Analysis, Texas HB 1285, 76th Leg., R.S. (1999).

The evident legislative intent in enacting §32.024(s) of the Human Resources Code was to prevent provider fraud, waste, and abuse by prohibiting an EPSDT provider from being the only adult present when EPSDT services are provided. Additionally, it is clear that the Legislature intended to promote the safety and well-being of children receiving services. This is consistent with the language of §531.02414(e), Government Code, which directs the Executive Commissioner of HHSC "to adopt rules to ensure the safe and efficient provision of nonemergency transportation services under the medical transportation program." And finally, it is clear that the Legislature intended to promote greater parental involvement, either through direct participation by a parent or guardian or through the involvement of another adult authorized by a parent or guardian to accompany the child if a parent or guardian cannot be present. Because the over-arching goal is to prevent provider fraud and to promote the safety of children, HHSC concludes that the Legislature did not intend that "another adult" could include a provider of EPSDT services or be employed by or affiliated with a provider of EPSDT services for which reimbursement is sought.

2. Phrase "another adult" includes persons enumerated in §32.001(a), Family Code

Section 32.024(s), Human Resources Code, does not define "another adult." However, the legislative history of the bill enacting the section demonstrates that the Legislature drafted the section with the Family Code in mind, specifically those provisions of the Family Code that authorize another adult to make medical and health care decisions for a child in the absence of a parent or guardian. See House Research Organization, Bill Analysis, Texas HB 1285, 76th Leg., R.S. (1999).

Section 151.001, Family Code, sets out the rights and duties of a parent of a child, including the right to consent to the child's medical and dental care:

A parent of a child has the following rights and duties:

... ...

(2) the duty of care, control, protection, and reasonable discipline of the child;

(3) the duty to support the child, including providing the child with clothing, food, shelter, medical and dental care, and education; ...

(6) the right to consent to the child's marriage, enlistment in the armed forces of the United States, medical and dental care, and psychiatric, psychological, and surgical treatment. ...

And §32.001(a), Family Code, provides that:

[t]he following persons may consent to medical, dental, psychological, and surgical treatment of a child when the person having the right to consent as otherwise provided by law cannot be contacted and that person has not given actual notice to the contrary:

(1) a grandparent of the child;

(2) an adult brother or sister of the child;

(3) an adult aunt or uncle of the child;

(4) an educational institution in which the child is enrolled that has received written authorization to consent from a person having the right to consent;

(5) an adult who has actual care, control, and possession of the child and has written authorization to consent from a person having the right to consent;

(6) a court having jurisdiction over a suit affecting the parent-child relationship of which the child is the subject;

(7) an adult responsible for the actual care, control, and possession of a child under the jurisdiction of a juvenile court or committed by a juvenile court to the care of an agency of the state or county;

(8) a peace officer who has lawfully taken custody of a minor, if the peace officer has reasonable grounds to believe the minor is in need of immediate treatment.

Consistent with long-standing judicial canons of statutory construction, because §32.024(s), Human Resources Code, and §32.001(a) and §151.001, Family Code, all deal with similar subject matter, namely consent to medical care, treatment, and services for a child, they should be construed together. Therefore, HHSC believes that the phrase "another adult" in §32.024(s) of the Human Resources Code should be read to include the list of persons enumerated in §32.001(a), Family Code, who may consent to medical treatment for a child in the absence of a parent or guardian.

B. Services provided under the Medical Transportation Program

The Medical Transportation Program provides "nonemergency transportation services to and from covered health care services, based on medical necessity, to recipients under the Medicaid program, the children with special health care needs program, and the transportation for indigent cancer patients program, who have no other means of transportation." Government Code, §531.02414(a)(1). 1 TAC Chapter 380 sets out the rules
that govern the Medicaid Transportation Program, including provisions governing eligibility, limitations, and exclusions. Section 380.207 addresses eligibility and provides in pertinent part that:

[4](B) recipients are not eligible to receive medical transportation services under the following circumstances:

. . .

(4) the recipient is under 18 years of age and not accompanied by a parent or legal guardian, unless one of the following conditions exists:

(A) the recipient is aged 15 through 17 years of age and presents the parent's or legal guardian's signed, written consent for the transportation services to the Regional MTP office or the transportation contractor; and/or

(B) the treatment to which the minor is being transported is such that the law extends confidentiality to the minor for this treatment.

Section 380.207 will be amended in a companion rule to ensure that the provisions of that section are consistent with the provisions of the new §354.1133. This amendment to Chapter 380 is proposed elsewhere in this issue of the Texas Register.

SECTION-BY-SECTION SUMMARY

Proposed new §354.1133 sets out a requirement that a child receiving EPSDT services or MTP services or benefits must be accompanied by a parent, a guardian, or another adult who is authorized by a parent or guardian, and includes a person who is enumerated in §32.001(a), Family Code, as a person who may consent to the medical treatment of a child in the absence of the parent or guardian. A person authorized under this section cannot be a provider of Medicaid services or be an affiliate of a provider of Medicaid services for which reimbursement is sought.

Section 354.1133(a) declares that the section applies to all services provided or furnished pursuant to 25 TAC Chapter 33 (relating to the Early and Periodic Screening, Diagnosis, and Treatment) and Chapter 380 of this title (relating to the Medical Transportation Program).

Section 354.1133(b) defines the following term: (1) Affiliate; (2) Provider; and (3) Service.

Section 354.1133(c) imposes the requirement regarding parental accompaniment of a child receiving services.

Paragraph (1) provides that, except as provided in paragraph (2), as a condition of eligibility for reimbursement for the cost of any service provided at an EPSDT visit or screening, or during the provision of medical transportation services, a child younger than 15 years of age must be accompanied by one of the following:

(A) the child's parent or guardian; or

(B) another adult authorized by the parent or guardian, including a person who is enumerated in §32.001(a) of the Family Code.

Paragraph (2) provides that an adult authorized to accompany a child cannot be the provider of the Medicaid service or affiliated with the provider of the Medicaid service for which reimbursement is sought.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for each year of the first five years the proposed new rule will be in effect, enforcing or administer-

ing the new rule does not have foreseeable implications relating to costs or revenues of the state or local governments, because the new rule simply re-states the current law.

Adoption of this rule itself will not have adverse fiscal effect; however, to the extent that Medicaid services are currently provided in violation of current policy, rule, and state law, the enforcement of the rule may result in a reduction in the utilization of services. Because it is impossible at this time to determine the number and scope of any violations, it is impossible to determine possible fiscal effects of enforcement of the rule.

In addition, Medicaid recipients may receive some services that are affected by this rule in settings other than the provider's office or facility. Therefore, to the extent that a service may be available in an alternative setting (for example, the Medicaid recipient's home), the enforcement of the rule should not have a negative impact on a client's access to services.

PUBLIC BENEFIT AND COSTS

Billy Millwee, Deputy Executive Commissioner for Health Services Operations, has determined that, for each year of the first five years the new rule will be in effect, the public benefits expected as a result of adopting the proposed new rule are: (1) reduction in Medicaid fraud, waste, and abuse; and (2) enhanced safety and well-being of children receiving services.

Mr. Millwee anticipates that, to the degree a Medicaid provider currently complies with agency policy, there will not be an economic cost to persons who are required to comply with the new rule. HHSC expects a reduction in utilization of some services affected by this rule. Those reductions may have some impact on a local economy or local employment. HHSC cannot determine the scope of any such reductions. However, HHSC believes such reductions will primarily be attributable to utilization controls implemented through the expansion of managed care or other cost savings initiatives implemented by HHSC, rather than through enforcement of this rule.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the new rule, because this new rule is simply a restatement of the current law. The effects of this rule on providers who are not in compliance can be mitigated by providing services when convenient for Medicaid recipients (such as evening and weekend hours) or providing services, to the degree allowable, in the Medicaid recipient's home.

REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the 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 real property that would otherwise exist in the absence of government action and, therefore,

PUBLIC COMMENT

Written comments on the proposal may be submitted to Nicole Grant, Texas Health and Human Services Commission, Medical Transportation Program, MC-0209, P.O. Box 149030, Austin, Texas 78714-9030; by fax to (512) 706-4997; or by e-mail to nicole.grant@hhsc.state.tx.us, within 30 days after publication of this proposal in the Texas Register.

PUBLIC HEARING

A public hearing is scheduled for July 27, 2012 from 9:00 a.m. to 11:00 a.m. (central time) in the John H. Winters Building, Public Hearing Room 125, located at 701 W. 51st Street, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Leigh A. Van Kirk at (512) 491-2813.

STATUTORY AUTHORITY

The new rule is proposed under Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; the Human Resources Code, §32.021 and Government Code, §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas; and Government Code, §531.02414(e), which directs the Executive Commissioner to adopt rules to ensure the safe and efficient provision of services in the Medical Transportation Program.

The new rule affects the Human Resources Code, Chapter 32; and the Government Code, Chapter 531.

§354.1133. Parental Accompaniment Requirement.

(a) Scope. This section applies to a service provided or furnished pursuant to 25 TAC Chapter 33 (relating to Early and Periodic Screening, Diagnosis, and Treatment) or Chapter 380 of this title (relating to Medical Transportation Program).

(b) Definitions. For the purposes of this section, the following terms have the following meanings.

(1) Affiliate--Except for an individual listed in §32.001(a)(1) - (3) of the Family Code, a person who is employed by, contracts with, or volunteers with:

(A) a provider or an entity contracted with a provider;

(B) an organization established by a provider or group of providers; or

(C) an entity that is associated with or related to a provider and that receives at least 25 percent of its financial support from:

(i) a provider;

(ii) a group of providers; or

(iii) an organization related to a provider or a group of providers.

(2) Provider--An individual, facility, agency, institution, organization, group, or other entity enrolled with the State of Texas to provide services under the Texas Medicaid program.

(3) Service--

(A) A service provided or furnished at an Early and Periodic Screening, Diagnosis, and Treatment visit or screening; or

(B) A benefit or service provided under the Medical Transportation Program.

(c) Parental accompaniment.

(1) Except as provided in paragraph (2) of this subsection, as a condition of eligibility for reimbursement for the cost of a service, a child younger than 15 years of age must be accompanied by at least one of the following:

(A) the child's parent or guardian; or

(B) another adult authorized by the parent or guardian, including an individual who is enumerated in §32.001(a) of the Family Code.

(2) An adult authorized to accompany a child cannot be the provider of a service for which reimbursement is sought or an affiliate.

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

Filed with the Office of the Secretary of State on June 18, 2012.

TRD-201203198
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission

Earliest possible date of adoption: July 29, 2012

For further information, please call: (512) 424-6900

CHAPTER 380. MEDICAL TRANSPORTATION PROGRAM

SUBCHAPTER B. ELIGIBILITY, PROGRAM SERVICES, PROCESSES, ADDITIONAL TRANSPORTATION CONNECTED WITH AN AUTHORIZED TRIP, LIMITATIONS, AND EXCLUSIONS

1 TAC §380.207

The Texas Health and Human Services Commission (HHSC) proposes an amendment to §380.207, concerning program limitations in the Medical Transportation Program (MTP) operated under Chapter 380. Elsewhere in this issue of the Texas Register, HHSC is concurrently proposing new §354.1133, concerning the parental accompaniment requirement for the Medical Transportation Program (MTP) and Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services. The proposed amendments ensure that §380.207 is consistent with the proposed new §354.1133.

The proposed new §354.1133 clarifies and confirms HHSC policy requiring a parent, a guardian, or another adult authorized by a parent or guardian to accompany a child who receives an EPSDT (known in Texas as Texas Health Steps) service pursuant to 25 TAC Chapter 33 or who receives a service or benefit provided by MTP operated pursuant to 1 TAC Chapter 380. The proposed new rule clarifies and conforms provider practices to HHSC’s long-standing policies of promoting program integrity, ensuring the safety of children receiving services, and encouraging parental involvement in the care of the child. The proposed new rule will supplement or supersede current rules governing
parental accompaniment set out in 1 TAC §380.207, which sets out program limitations in MTP, and 25 TAC §33.2 and §33.6, which set out requirements for EPSDT services.

The proposed amendment to §380.207 will effect two substantive changes. First, the amendment adds language that provides that a recipient is not eligible to receive MTP services if the recipient is not accompanied by a parent, a guardian, or another adult authorized by a parent or guardian, as required by proposed new §354.1133. Second, the amendment adds and deletes language that limits the scope of the provision to recipients aged 15 through 17, rather than recipients under 18.

BACKGROUND AND JUSTIFICATION

The amendment to §380.207 will ensure that Chapter 380 is consistent with the new proposed §354.1133. The new §354.1133 is proposed as a result of HHSC staff’s discovery that the practices of some providers in the state are not in conformity with the provisions of state law and long-standing agency policy governing parental accompaniment of children under the age of 15. Specifically, HHSC has determined that some EPSDT providers or their employees were accompanying children on trips furnished by MTP and performing EPSDT services without a parent or guardian present. Among the reasons offered to justify these practices is the inability of parents to take time off during the work day to attend an EPSDT visit or screening and the lack of service opportunities being provided at times more convenient to the parent. Also, there is an apparent lack of awareness that some therapy services can be provided in the Medicaid recipient’s home.

The proposed new rule and the amended rule will ensure consistency in the delivery of EPSDT and MTP services and will ensure that parents or guardians may designate another adult to accompany the child, including those persons enumerated in §32.001(a), Family Code, who may make medical decisions for a child in the absence of a parent or guardian. A parent or guardian may not, however, designate as an authorized adult a Medicaid service provider or a person who is employed by or affiliated with a Medicaid service provider for which reimbursement is sought.

SECTION-BY-SECTION SUMMARY

Section 380.207 is amended by adding new paragraph (4), which provides that recipients are not eligible to receive MTP services if the recipient is not accompanied by a parent, guardian, or another adult authorized by the child’s parent or guardian, as required by proposed new §354.1133 of this title (relating to the Parental Accompaniment Requirement). Paragraph (4) also incorporates an MTP requirement that a parent or guardian must provide written authorization on a form prescribed by HHSC for another adult to accompany the child receiving services.

Paragraph (4) is renumbered as paragraph (5) and amended to limit the scope of the provision to recipients aged 15 through 17, rather than recipients under 18.

 Paragraphs (1) and (3) are amended in a non-substantive way, correcting grammatical errors and deleting unnecessary language. Current paragraphs (5) - (10) are renumbered as paragraphs (6) - (11).

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for each year of the first five years the proposed amendment will be in effect, enforcing or adminis- tering the amended rule does not have foreseeable implications relating to costs or revenues of the state or local governments, because the amended rule simply re-states the current law.

Adoption of this amendment itself will not have adverse fiscal effect; however, to the extent that Medicaid services are currently provided in violation of current policy, rule, and state law, the enforcement of the amended rule may result in a reduction in the utilization of services. Because it is impossible at this time to determine the number and scope of any violations, it is impossible to determine possible fiscal effects of enforcement of the amended rule.

In addition, Medicaid recipients may receive some services that are affected by this amended rule in settings other than the provider's office or facility. Therefore, to the extent that a service may be available in an alternative setting (for example, the Medicaid recipient's home), the enforcement of the amended rule should not have a negative impact on a client's access to services.

PUBLIC BENEFIT AND COSTS

Billy Millwee, Deputy Executive Commissioner for Health Services Operations, has determined that, for each year of the first five years the amendment will be in effect, the public benefits expected as a result of adopting the amended rule are: (1) reduction in Medicaid fraud, waste, and abuse; and (2) enhanced safety and well-being of children receiving services.

Mr. Millwee anticipates that, to the degree a Medicaid provider currently complies with agency policy, there will not be an economic cost to persons who are required to comply with the amended rule. HHSC expects a reduction in utilization of some services affected by this amended rule. Those reductions may have some impact on a local economy or local employment. HHSC cannot determine the scope of any such reductions. However, HHSC believes such reductions will primarily be attributable to utilization controls implemented through the expansion of managed care or other cost savings initiatives implemented by HHSC, rather than through enforcement of this amended rule.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amended rule, because this amended rule is simply a restatement of the current law. The effects of this amended rule on providers who are not in compliance can be mitigated by providing services when convenient for Medicaid recipients (such as evening and weekend hours) or providing services, to the degree allowable, in the Medicaid recipient's home.

REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the 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 real property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Nicole Grant, Texas Health and Human Services Commission, Medical Transportation Program, MC-0209, P.O. Box 149030, Austin, Texas 78714-9030; by fax to (512) 706-4997; or by e-mail to nicole.grant@hhsc.state.tx.us, within 30 days after publication of this proposal in the Texas Register.

PUBLIC HEARING

A public hearing is scheduled for July 27, 2012 from 9:00 a.m. to 11:00 a.m. (central time) in the John H. Winters Building, Public Hearing Room 125, located at 701 W. 51st Street, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Leigh A. Van Kirk at (512) 491-2813.

STATUTORY AUTHORITY

The amendment is proposed under Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; the Human Resources Code, §32.021 and Government Code, §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas; and Government Code, §531.02414(e), which directs the Executive Commissioner to adopt rules to ensure the safe and efficient provision of services in the Medical Transportation Program.

The amendment affects the Human Resources Code, Chapter 32; and the Government Code, Chapter 531.

§380.207. Program Limitations.

Recipients are not eligible to receive medical transportation services under the following circumstances:

(1) to and from a day activity, a personal care home or state institution, or a facility participating in another Title [Title] XIX program for which the reimbursement rate structure includes transportation funds, except as specified in §380.203(1) of this subchapter (relating to [Program] Program Services);

(2) the intended destination is a nursing facility;

(3) the recipient is an inpatient in a health care facility, except as specified in §380.203(1) of this subchapter [Program Services];

(4) the recipient is under 15 years of age and:

(A) the recipient's parent, guardian, or another adult authorized by the parent or guardian does not accompany the recipient as required by §354.1133 of this title (relating to Parental Accompaniment Requirement); and

(B) the parent or guardian, if authorizing another adult to accompany the recipient, has not provided written authorization on a form prescribed by the Health and Human Services Commission;

(5) [44] the recipient is 15 through 17 [under 18] years of age and not accompanied [by a parent or legal guardian], unless one of the following conditions exists:

(A) the recipient [is aged 15 through 17 years of age and] presents the parent's or legal guardian's signed, written consent for the transportation services to the Regional MTP office or the transportation contractor; and/or

(B) the treatment to which the minor is being transported is such that the law extends confidentiality to the minor for this treatment;

(6) [45] the recipient or another person or entity providing care for the recipient receives direct payment of worker's compensation benefits, U.S. Department of Veterans Affairs benefits, or other third-party resources for transportation to health care services on the recipient's behalf;

(7) [46] the recipient is on limited status, unless the provider has made the referral or the recipient requests family planning services;

(8) [47] TICP diagnostic visits and/or cancer or cancer-related treatments that are provided out-of-state;

(9) [48] the recipient and/or attendant intentionally, knowingly, or recklessly boards the vehicle carrying an illegal knife, a club, handgun or other weapon, as defined in Penal Code, §46.01, on or about his or her person;

(10) [49] a third-party, such as a lodging establishment, provides transportation, meals, and/or lodging at no charge for a recipient and attendant, for a particular appointment; or

(11) [49] an attendant does not accompany the recipient on the MTP-requested trip when a Health Care Provider's Statement of Need, Form 3113 or equivalent, is on file stating the recipient requires an attendant(s).

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

Filed with the Office of the Secretary of State on June 18, 2012.

TRD-201203199

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission

Earliest possible date of adoption: July 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 1. CONSUMER CREDIT REGULATION

SUBCHAPTER B. INTERPRETATIONS AND ADVISORY LETTERS

7 TAC §1.201

The Finance Commission of Texas (commission) proposes amendments to §1.201, concerning Interpretations and Advisory Letters.
In general, the purpose of the amendments to §1.201 is to implement changes resulting from the commission's review of Chapter 1 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC Part 1, Chapter 1 was published in the May 11, 2012, issue of the Texas Register (37 TexReg 3609). The agency did not receive any comments on the notice of intention to review.

Overall, the proposed changes provide clarification, improved grammar, plain language and better readability, and technical corrections. Revisions concerning the processing of interpretation requests and related fees have been updated to conform the rule with current agency practice. The individual purposes of the amendments to each subsection are provided in the following paragraphs.

In subsection (a) concerning definitions, the verb "shall" has been changed to "will" in the introductory paragraph, since the latter language is reflective of a more modern and plain language approach in regulations. The definition for "agency or OCCC" has been added to properly identify the Office of Consumer Credit Commissioner and allow the use of the agency's acronym when appropriate. Revisions have been made to clarify and streamline references to the Consumer Credit Commissioner. Additionally, §1.201(a) contains other technical corrections, including the renumbering of existing definitions.

Subsection (b) outlines the information that must be submitted in a request for interpretation. Hence, this proposal replaces the current language of "Procedures for Finance Commission of Texas interpretations" with the following more accurate phrase: "Required information for interpretation request." In paragraph (4), the fee charged for an interpretation is proposed to be increased from $300 to $500. This fee has remained unchanged for almost 10 years. Thus, the increase is appropriate and necessary to compensate the agency for the expenses involved in researching and answering present day requests. In addition, paragraph (4) includes revisions clarifying that the agency will determine refunds and fee waivers.

Current paragraph (6) concerning "Processing time" has been renamed "Processing of request" and reorganized into proposed subsection (c). Section 1.201(c) has been subdivided into paragraphs (1) and (2) to reflect situations where the agency declines to issue an interpretation and where an interpretation may be presented to the commission for approval.

Current subsection (c) has been relettered as proposed subsection (d) and relates to OCCC advisory letters. The introductory phrase as proposed includes use of the agency's acronym and a parallel change of "shall" to "must." The quoted notation that must be included in every advisory letter has been reformatted with initial capitalization as opposed to all letters being capitalized. Additionally, subsections (c) and (d) contain other clarifying and technical corrections.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments to §1.201 are in effect, there will be no fiscal implications for state or local government as a result of administering the amendments.

For each year of the first five years the amendments to §1.201 are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will be more easily understood. The anticipated cost to persons who are required to comply with the amendments as proposed is the $200 increase in fee. There will be no adverse economic effect on small or micro-businesses. Aside from the increased fee, 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 proposed amendments are published in the Texas Register. At the conclusion of the 31st day after the proposed amendments are published in the Texas Register, no further written comments will be considered or accepted by the commission.

The amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to propose rules to enforce Chapter 14 and Title 4 of the Texas Finance Code.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 14 and Title 4, §1.201. Interpretations and Advisory Letters.

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

(1) Advisory letter--A letter by the commissioner or a member of the staff of the Office of Consumer Credit Commissioner providing an informal advisory response to an inquiry concerning provisions of [the] Texas Finance Code, Title 4, Subtitle A or B, and is not an interpretation as defined in paragraph (4) [(3)] of this subsection.

(2) Agency or OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(3) [OCCC] Commissioner--The [commissioner of the Office of Consumer Credit Commissioner of the State of Texas.

(4) [OCCC] Interpretation--A letter issued by the [consumer credit] commissioner and approved by the Finance Commission of Texas pursuant to Texas Finance Code, §14.108 interpreting a provision of Texas Finance Code, Title 4, Subtitle A or B in light of certain relevant facts provided by the requestor.

(b) Required information for interpretation request. [Procedures for Finance Commission of Texas interpretations.] Any person may submit a request for an interpretation. All requests must be directed to the commissioner and contain the following items:

(1) Statement requesting interpretation. An explicit statement that an interpretation approved by the Finance Commission of Texas is desired.

(2) Description of transaction, facts, and legal issues. A concise description of the contemplated transaction or activity contemplated, the legal issue raised, and all facts necessary to reach a conclusion in the matter.

(3) Pending litigation. A statement whether, to the best of the requestor's knowledge, the issue to be considered is an issue in pending litigation. Matters in litigation will ordinarily not be answered.

(4) Fee. A fee of $500 ($300) will be charged for an interpretation to compensate the agency for the expense involved in researching and answering the request. The payment of $500 ($300) should be submitted with the request. The agency [commission] may
determine and remit a partial or full refund if deemed applicable. The agency may waive the fee.

(5) Additional information. A requestor should also identify each provision of law involved, and indicate the requestor’s opinion of how the legal issues should be resolved, and the basis for that opinion, including an analysis of any relevant court decisions, as well as, all prior interpretations to which the request relates.

(c) [66] Processing of request. [Processing time.] Within 10 business days of receipt of a valid request pursuant to this subsection, the request will be filed with the Texas Register for publication.

Upon publication in the Texas Register, any party may within 31 calendar days submit briefs or proposals pertaining to the request.

(1) Interpretation not issued. After publication of a valid request for interpretation, the agency may decline to issue an interpretation. A summary of the agency’s reasons for deciding not to issue an interpretation will be published in the Texas Register.

(2) Approved interpretation. The agency may [will] draft an interpretation or a response and present it to the Finance Commission of Texas for consideration. Within 10 business days of approval of an interpretation by [an action of] the Finance Commission of Texas, a summary of the interpretation [or the response] will be filed with the Texas Register for publication. Copies of interpretations [or responses] shall contain a notation of approval and the date of action by the Finance Commission of Texas.

(d) [67] OCCC [Office of Consumer Credit Commissioner] advisory letters. Each advisory letter issued by the OCCC must [shall] contain the following notation: “This advisory letter is not an interpretation approved by the Finance Commission of Texas pursuant to Texas Finance Code, §14.108. [THIS ADVISORY LETTER IS NOT AN INTERPRETATION APPROVED BY THE FINANCE COMMISSION OF TEXAS PURSUANT TO TEXAS FINANCE CODE, §14.108.] If an interpretation approved by the Finance Commission of Texas is desired, then an interpretation should be requested pursuant to the procedures set forth in 7 Texas Administrative Code, §1.201(b).”

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

Filed with the Office of the Secretary of State on June 15, 2012.

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Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Earliest possible date of adoption: July 29, 2012
For further information, please call: (512) 936-7621

CHAPTER 2. RESIDENTIAL MORTGAGE LOAN ORIGINATORS APPLYING FOR LICENSURE WITH THE OFFICE OF CONSUMER CREDIT COMMISSIONER UNDER THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT

SUBCHAPTER A. APPLICATION PROCEDURES FOR OFFICE OF CONSUMER CREDIT COMMISSIONER APPLICANTS

7 TAC §2.104

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §2.104, concerning Application and Renewal Fees, for residential mortgage loan originators applying for licensure with the Office of Consumer Credit Commissioner (OCCC) under the Secure and Fair Enforcement for Mortgage Licensing Act.

In general, the purpose of the amendments to §2.104 is to clarify annual renewal fees and establish reinstatement fees for OCCC applicants under Texas Finance Code, Chapter 180, Residential Mortgage Loan Originators (RMLOs), the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

Section 2.104 sets out the required application and renewal fees for OCCC applicants and licensees. These fees must be submitted to the Nationwide Mortgage Licensing System and Registry (NMLSR) and are nonrefundable. Subsection (a) includes a technical correction. In subsection (c), the proposed amendments clarify that the annual renewal fee is “not to exceed” $300 and that such fees are due by December 31 of each year.

Proposed new subsection (d) outlines a reinstatement period and fee for RMLOs applying for a license with the OCCC. The agency conducted a review of the reinstatement procedures utilized by other states, as well as an analysis of the costs to the OCCC to perform reinstatement for Texas RMLOs. Subsection (d) sets a $50 fee for reinstatement and a yearly reinstatement period from January 1 through the last day of February. The agency believes that these reinstatement requirements provide the appropriate balance of reasonable fees and timeframe for licensees and the OCCC, allowing reinstatement of recently expired RMLOs.

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

Commissioner Pettijohn 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 the proposed amendments will be a more efficient licensing process permitting recently expired RMLOs to reinstate their registration with the OCCC for a minimal fee up to two months after expiration.

Additional economic costs will be incurred by a person required to comply with this proposal. The reinstatement fee of $50 outlined by proposed §2.104(d) constitutes the potential anticipated costs for applicants seeking to reinstate their expired licenses with the OCCC. Through a nationwide analysis, the agency believes that this reinstatement fee is reasonable and necessary to offer this process. However, as the annual renewal fee is currently set at $300, the amendments merely clarify that this fee is "not to exceed" $300, providing a possible cost reduction to registrants.

Thus, aside from the $50 reinstatement fee, the agency does not anticipate any other costs to or effects on persons who are required to comply with the amendments as proposed. The agency is not aware of any adverse economic effect on small or micro-businesses resulting from the proposed amendments. But in order to obtain more complete information concerning the eco-
nomic effect of the amendments, the agency invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses.

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

These amendments are proposed under Texas Finance Code, §180.004, which authorizes the commission to implement rules necessary to comply with Chapter 180 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289). Additionally, the proposed amendments are also proposed under Texas Finance Code, §180.061, which authorizes the commission to adopt rules establishing requirements as necessary for payment of fees to apply for or renew licenses through the NMLSR, and under Texas Finance Code, §14.107, which authorizes the commission by rule to set the fees for licensing and examination under Chapter 342, 347, 348, or 351 at amounts or rates necessary to recover the costs of administering those and other chapters.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 180, Residential Mortgage Loan Originators, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009, and Texas Finance Code, Chapters 342, 347, 348, and 351.

§2.104. Application and Renewal Fees.

(a) Required submission to NMLSR. To become an RMLO, an OCCC applicant must submit the required fees to the NMLSR. A fee is required to be submitted at the time of application and at the time of renewal. All fees are nonrefundable [non-refundable].

(b) Fingerprint processing fees. Fingerprint processing fees must also be paid in the amount necessary to recover the costs of investigating the OCCC applicant's fingerprint record (amount required by third party).

(c) OCCC application and renewal fees. The Finance Commission of Texas sets the RMLO application fee at $300 and the RMLO annual renewal fee not to exceed $300 for applications filed with the OCCC. Annual renewal fees are due to the NMLSR by December 31 of each year. A third-party operator pays the NMLSR and that third-party operator sets the amount of the required system fees. Applicants and RMLOs must pay all required application and renewal fees, fingerprint processing fees, and any additional amounts required by the third-party operator.

(d) OCCC reinstatement period and fee. The Finance Commission of Texas sets the RMLO reinstatement fee at $50 for applications filed with the OCCC. The reinstatement period for OCCC applicants runs from January 1 through the last day of February each year. This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

File with the Office of the Secretary of State on June 15, 2012.

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Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Earliest possible date of adoption: July 29, 2012
For further information, please call: (512) 936-7621

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 82. ADMINISTRATION

7 TAC §82.1, §82.2

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §82.1, concerning Custody of Criminal History Record Information, and §82.2, concerning Public Information Requests; Charges.

In general, the purpose of the amendments to §82.1 and §82.2 is to implement changes resulting from the commission's review of Chapter 82 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Chapter 82 was published in the Texas Register on May 11, 2012, (37 TexReg 3609). The agency did not receive any comments on the notice of intention to review.

The individual purposes of the amendments to each rule are provided in the following paragraphs. The purpose of the amendments to §82.1 is to update which agency employees and other authorized persons have access to criminal history record information and to make technical corrections.

In both subsections of §82.1, the verb "shall" has been changed to "will," since the latter term is reflective of a more modern and plain language approach in regulations. Revisions have also been made throughout the section utilizing the agency's acronym ("OCCC") to provide more streamlined phrasing.

In §82.1(b), the list of agency employees and other authorized persons having access to criminal history record information has been updated to reflect current agency practice. The following parties are proposed for addition to subsection (b): the director of consumer protection, the public information officer, and any other employee who requires access in order to fulfill the employee's duties.

The purpose of the amendments to §82.2 is to conform the rule to the agency's current public information process, remove obsolete language, and add clarification. Throughout §82.2, the verb "shall" has been changed to "will," providing parallel changes consistent with those made in §82.1.

In subsection (a) of §82.2 concerning definitions, the acronym "OCCC" has been added to the definition as an alternative for "agency" to allow the use of the agency's acronym when appropriate. Proposed new paragraph (3) contains the definition for "public information request" as a request pursuant to Texas Government Code, Chapter 552 (the Texas Public Information Act). This definition also provides that the term "open records request" may be used synonymously with "public information request." Concerning the definition of "readily available information," the latter phrase concerning redaction time has been deleted and replaced with language clarifying that information located in sepa-
rate buildings or remote storage as per Texas Government Code, §552.261 is not considered to be readily available.

Subsection (b) of §82.2 includes the more descriptive tagline of “Receipt of public information request.” Language referencing other state and federal agencies has been removed, as those requests are usually handled as intergovernmental transfers of information. In the sentence concerning fee waivers and reductions, a reference has been added to Texas Government Code, §552.267, which authorizes these fee changes for requests made in the public interest. Additionally, the last phrase concerning no fee for requests of 50 pages or less has been revised and relocated to subsection (c).

Subsection (c) of §82.2 concerning copy and service charges has experienced several revisions and been reorganized to better reflect current agency practice and provide clarity for requestors of public information. The first two paragraphs have been recategorized into the most determinative factors affecting charges: (1) requests of 50 pages or fewer, and (2) requests of more than 50 pages. Requests under paragraph (1) have no fee, and those under paragraph (2) have charges of $0.10 per page and $15 per hour for administrative time. Obsolete charges for overhead and computer time not used by the agency are proposed for deletion.

Section 82.2(c)(3) has been revised to specifically relate to requests for not readily available information. The proposed changes include a citation to the provisions concerning remote storage in Texas Government Code, §552.261, language concerning the types of personnel time that may be charged for at $15 per hour (e.g., driving to and from the storage location, retrieving and restoring information), and a citation to the Office of the Attorney General’s (OAG) rule related to this issue. Further, all of the charges under this paragraph are optional, as this proposal replaces the verb “shall” with “may” in this instance.

Descriptive taglines have been added to paragraphs (4) - (6) to provide clarification. A new sentence has been added to §82.2(c)(4) concerning certification, stating that certified copies will bear the commissioner’s signature and agency seal. Paragraph (5) contains a more precise citation to the OAG’s public information cost rules chapter. Paragraph (6) concerning cost estimates has been subdivided into two subparagraphs: (A) for requests over $40, and (B) for requests over $100.

In subsection (d) regarding delivery charges, current paragraph (3) relating to delivery via fax is proposed for deletion as those charges are now obsolete and not used by the agency. Proposed §82.2(d)(3) contains new language concerning delivery via email and states that requests of more than 50 pages sent via email will not include copying charges, except for pages requiring redaction of confidential information.

Proposed §82.2(e) includes new paragraphs (2) and (3), which provide clarification relating to requests for inspection of 50 or more pages, and inspections costing over $100.

The remaining changes to both §82.1 and §82.2 are technical and nonsubstantive in nature. Additionally, the third and final rule in Chapter 82, §82.3, concerning Request for Criminal History Evaluation Letter, does not contain any changes resulting from rule review.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments to §82.1 and §82.2 are in effect, there will be no fiscal implications for state or local government as a result of administering the rules.

For each year of the first five years the amendments to §82.1 and §82.2 are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission’s rules will conform to current practice, will be more easily understood by persons required to comply with the rules, and will be more easily enforced.

In particular, the changes to §82.2, Public Information Requests; Charges, merely reflect the charges authorized by the Texas Public Information Act and the Office of the Attorney General. Otherwise, any changes in charges result in a reduction of costs to requestors. Thus, there is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro-businesses. There will be no effect on individuals required to comply with the amendments as proposed.

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

The amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §14.157 authorizes the commission to adopt rules governing the custody and use of criminal history record information obtained under Texas Finance Code, Chapter 14, Subchapter D. Texas Government Code, §552.230 authorizes governmental bodies to adopt reasonable rules of procedure under which public information may be inspected and copied.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 14 and Title 4.

§82.1 Custody of Criminal History Record Information.

(a) The use of "criminal history record information," as defined by Texas Government Code, §411.082, obtained or maintained by the Office of Consumer Credit Commissioner (OCCC) pursuant to Texas Finance Code, Chapter 14, Subchapter D, will [shall] be limited to assisting the commissioner in determining the character and fitness of an applicant for a license issued by the OCCC [consumer credit commissioner] or in determining the character and fitness of a current license holder of the OCCC [consumer credit commissioner]. All criminal history record information received by the OCCC [Office of Consumer Credit Commissioner] is confidential information and is for the exclusive use of the OCCC [Office of Consumer Credit Commissioner]. Except on court order or as otherwise provided by Texas Finance Code, §14.155, such information may not be disclosed to any person or agency.

(b) Access to criminal history record information maintained by the OCCC will [Office of Consumer Credit Commissioner shall] be limited to the following persons:

(1) the Consumer Credit Commissioner [consumer credit commissioner];

(2) any assistant commissioner;
(3) any attorney employed by the OCCC [Office of Consumer Credit Commissioner] or an assistant attorney general representing the interest of the OCCC [Office of Consumer Credit Commissioner];

(4) employees of the licensing section; [and]

(5) the director of consumer protection;

(6) the public information officer;

(7) [§5] any person appointed to act on behalf of or in the stead of any of the above; and[

(8) any permanent or temporary employee of the OCCC that requires access to criminal history record information in order to fulfill the employee's duties.

§82.2. Public Information Requests; Charges.

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

1. Agency or OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

2. Commissioner--The Consumer Credit Commissioner of the State of Texas [consumer credit commissioner].

3. Public information request--A written request made for public information pursuant to Texas Government Code, Chapter 552 (the Texas Public Information Act). Another name for a "public information request" is an "open records request," and these terms may be used synonymously.

4. [§3] Readily available information--Public information that already exists in printed form, or information that is stored electronically, and is ready to be printed or copied without requiring any programming, but not information that is located in two or more separate buildings that are not physically connected with each other or information that is located in a remote storage facility as per Texas Government Code, §552.261. [requires more than 30 minutes to prepare for release as a result of required reduction for the purpose of deleting information that is confidential by law.]

5. [§4] Standard-size copy--A printed impression on one side of a piece of paper that measures up to 8 1/2 inches by 11 inches. A piece of paper that is printed on both sides will [shall] be counted as two copies.

(b) Receipt of public information request. [The request.] Upon receipt of a written request from a requesting party[, including another state or federal agency,] which clearly identifies the public records requested to be copied or examined pursuant to Texas Government Code, Chapter 552 (the Texas Public Information Act), the agency will [shall] make every reasonable effort to provide the information in the manner requested as quickly as possible without disruption of normal business activities, on condition [provided] that information that is confidential by law will not be provided except under court order, Attorney General directive, or other legal process. All inquiries will be treated equally. Fees imposed by this section may be waived or reduced at the discretion of the commissioner as per Texas Government Code, §552.267. [consumer credit commissioner, provided that no fee will be charged for requests for 50 or less standard-size copies of readily available information.]

(c) Copy and service charges.

1. 50 pages or fewer. No fee will be charged for requests for 50 or fewer standard-size copies of public information. [A charge of

$10 per page will be made for standard-size copies of readily available information.]

2. More than 50 pages. For standard-size copies of more than 50 pages of public [readily available] information, the following charges will apply: [a charge of]

(A) $0.10 per page; and

(B) $15 per hour of personnel time spent locating, copying, and preparing the information for delivery or inspection [shall be added to the copy charges specified by paragraph (1) of this subsection. A charge of $3.00 per hour for overhead may also be added to the charges].

3. Not readily available information. For standard-size copies of information that is not readily available and that must be retrieved from a separate or remote storage location as per Texas Government Code, §552.261, and regardless of number of pages, a charge of $15 per hour of personnel time spent driving to and from the storage location or locating, retrieving, and restoring the information may [copying, redacting confidential information, and preparing the information for delivery or inspection shall] be added to the [copy] charges specified by paragraph (4) of this subsection as per 1 TAC §70.3 (relating to Charges for Providing Copies of Public Information). [A charge of $3.00 per hour for overhead may also be added to the charges. If applicable, a charge of $.50 per minute of computer time may also be added to the charges.]

4. Certification. If certification of copies is requested, an additional charge of $5 [§5.00] per certification will be added to the computed fee. A certified copy will bear the signature of the commissioner and the OCCC seal.

5. Non-standard-size copies. The cost for non-standard-size copies will [shall] be determined by reference to any recommended standards promulgated by the Office of the Attorney General, Title 1, Part 3, Chapter 70 (relating to Cost of Copies of Public Information) §§70.01-70.14, or as such rules may be amended.


(A) Over $40. If the anticipated charges under this subsection plus anticipated charges under subsection (d) of this section exceed $40, the agency will send an estimate outlining the estimated cost to fulfill the request as per Texas Government Code, §552.2615.

(B) Over $100. If the anticipated charges under this subsection plus anticipated charges under subsection (d) of this section exceed $100, the agency will send a cost estimate as provided in subparagraph (A) of this paragraph. In addition, the agency may require cash prepayment or bond equal to the total anticipated charges prior to providing copies [release] of the requested information, as per Texas Government Code, §552.263.

(d) Delivery charges.

1. U.S. mail. When copies are required to be mailed, the cost of postage will be added to the computed fee.

2. Expedited delivery. When copies are required to be sent by overnight delivery service or other expedited delivery, the cost of the service will be added to the computed fee unless the requestor arranges to pay the delivery charges directly.

3. Email. When copies of more than 50 pages are sent via email, the $0.10 per page copying charge will not apply except for pages requiring redaction of confidential information.

[(3) Faxing. The charge for faxing copies is $.10 per page. The agency may charge $.50 per page for telephone delivery within]
the same area code, and $1.00 per page for telephone delivery to a
different area code. The agency may refuse to fax more than 20 pages
of information and may require another form of delivery.)

(c) Inspection of records.

(1) Generally. Records access for purposes of inspection
will be by appointment only and will only be available during regular
business hours of the agency. If the safety of any public record or the
protection of confidential information is at issue, or when a request
for inspection would be unduly disruptive to the ongoing business of the
office, physical access may be denied and the option of receiving copies
at the usual fees will [shall] be provided.

(2) Redaction of confidential information and more than
50 pages. If confidential information must be redacted prior to a
requestor’s inspection and the request totals more than 50 pages, $0.10
per page may be charged to prepare the inspection copies containing
the remaining public information.

(3) Over $100. If a request for inspection would result in
charges of over $100, the agency may require a 50% cash prepayment
or a bond equal to the total anticipated charges prior to providing access
to the requested information, as per Texas Government Code, §552.263
and TAC §70.7 (relating to Estimates and Waivers of Public Informa-
tion Charges).

(f) Agency officer for public information. The commissioner
or the commissioner’s designee is the agency’s officer for public
information.

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

Filed with the Office of the Secretary of State on June 15, 2012.
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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: July 29, 2012
For further information, please call: (512) 936-7621

CHAPTER 83. REGULATED LENDERS AND
CREDIT ACCESS BUSINESSES
SUBCHAPTER A. RULES FOR REGULATED
LENDERS
DIVISION 10. DUTIES AND AUTHORITY OF
AUTHORIZED LENDERS
7 TAC §83.838

The Finance Commission of Texas (commission) proposes new
§83.838 in Subchapter A, Division 10 of 7 TAC Chapter 83, concern-
ing multiple-advance loans.

The purpose of the proposed new rule is to clarify which loans are
subject to Texas Finance Code, §342.455. That section is
titled "Agreement for More than One Loan or Cash Advance," and it provides interest limitations and disclosure requirements
for agreements in which a lender makes multiple advances to
a borrower. Subsection (b) of §342.455 states that the interest
rate for a multiple-advance loan is limited to the Subchapter E
times, provided in Texas Finance Code, §342.201. Subsections
(c) - (g) contain disclosure requirements, including the date of
the agreement; any insurance charges; and the name, address,
and signature of the borrower and lender.

Although §342.455 does not specifically identify which loans are
exempt, the agency believes that the section should be interpreted as applying only when a subsequent advance increases
a loan’s principal balance after the original date of the loan. This
interpretation is consistent with the statute’s use of the phrase
“from time to time,” which suggests that the parties contemplate
that the advances will be made at separate times.

Proposed new §83.838 defines a "multiple-advance loan" as a
loan agreement subject to Texas Finance Code, Chapter 342,
under which more than one loan or advance may be made to a
borrower from time to time. Subsection (b) provides that multi-
ple-advance loans are subject to the requirements provided in
Texas Finance Code, §342.455. Subsection (c) provides that a
loan is not subject to §342.455 if all advances occur on the same
date, or if all advances after the initial advance occur because of
the borrower’s default (e.g., collateral protection insurance fees,
repossession fees, court costs).

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

Commissioner Pettijohn has also determined that for each year
of the first five years the rule is in effect the public benefit antici-
ipated as a result of the new rule will be increased clarity and
certainty regarding the application of Texas Finance Code,
§342.455.

There is no anticipated cost to persons who are required to comply
with the rule as proposed. There will be no effect on individ-
uals required to comply with the new rule as proposed.

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

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

This new section is proposed under Texas Finance Code,
§342.007, which authorizes the Finance Commission to adopt
rules necessary to implement and enforce Texas Finance Code,
Chapter 342.

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

§83.838. Loans with Multiple Advances.

(a) Definition. In this section, "multiple-advance loan" means
a loan agreement subject to Texas Finance Code, Chapter 342, under
which more than one loan or advance may be made to a borrower from time to time.

(b) Requirements for multiple-advance loans. In connection with a multiple-advance loan, an authorized lender must comply with the interest limitations, disclosure requirements, and other requirements provided in Texas Finance Code, §342.455.

(c) Loans not covered. The following loans are not subject to this section or to Texas Finance Code, §342.455:

1. loans in which all advances occur on the same date; and
2. loans in which all advances after the initial advance occur because of the borrower’s default (e.g., collateral protection insurance fees, repossession fees, court costs).

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

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7621

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SUBCHAPTER B. RULES FOR CREDIT ACCESS BUSINESSES
DIVISION 3. APPLICATION PROCEDURES

7 TAC §83.3002

The Finance Commission of Texas (commission) proposes amendments to §83.3002, concerning Filing of New Application for credit access businesses.

The purpose of the amendments to §83.3002 is to provide a procedure for current licensees to add one or more locations (branches) after approval of their most recent new or transfer license application. The amendments outline two timeframes: (1) applications received after 90 days from last new or transfer license approval, and (2) applications received within 90 days from last new or transfer license approval. The latter category affords a streamlined procedure where fewer documents are required.

The proposed amendments add new paragraph (3) to §83.3002 regarding subsequent applications for branch offices. Proposed subparagraph (A) states that if a currently licensed credit access business files an application for a new office after 90 days from its last new or transfer license approval, the applicant must follow the standard new application process contained in the existing rule. However, if required information on file with the agency is current and valid, that information does not need to be resubmitted.

Proposed §83.3002(3)(B) details the simplified process for applicants wishing to add locations within 90 days from their last new or transfer license approval. To utilize this provision, any action, fact, or other information cannot require a materially different answer than that given in the last new or transfer license application. Applicants under subparagraph (B) must provide the following four items: (1) a branch consent form signed by an authorized individual verifying that there have been no changes from the last application; (2) the location information and responsible person for each new branch; (3) the new application fees, with the exception of the investigation fee; and (4) if requested, a new financial statement. Additionally, the commissioner may require any other information necessary to process the branch application.

Proposed new subparagraph (C) clarifies that a subsequent branch application filed under proposed new §83.3002(3)(B) does not qualify as the "last new or transfer license approval."

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

For each year of the first five years the amendments are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be a more efficient licensing process by allowing recently approved credit access businesses to add branch locations with the submission of minimal documents.

Additional economic costs will be incurred by a person required to comply with this proposal. The branch application fees referenced in proposed §83.3002(3)(B)(ii) and contained in current §83.3010(a) constitute the potential anticipated costs for applicants seeking to add one or more locations after their most recent license application. These fees are as follows: $600 active license annual assessment fee per location, $250 inactive license annual assessment fee per location, and $200 endowment fund fee per location. The agency believes that these branch application fees are reasonable and necessary to offer this process. However, without the proposed amendments, regardless of time filed, all subsequent branch applicants may have been required to pay all new application fees. By providing the streamlined process for those applying within 90 days, such applicants receive a possible cost reduction.

Thus, aside from the branch application fees outlined in the preceding paragraph, the agency does not anticipate any other costs to or effects on persons who are required to comply with the amendments as proposed. The agency is not aware of any adverse economic effect on small or micro-businesses resulting from the proposed amendments. But in order to obtain more complete information concerning the economic effect of the amendments, the agency invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses.

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

The amendments are proposed under Texas Finance Code, §393.622, which authorizes the Finance Commission to adopt
rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

§83.3002. Filing of New Application.

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

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

(3) Subsequent applications for branch offices.

(A) Branch applications received after 90 days from last new or transfer license approval. If the applicant is currently licensed and filing an application for a new office after 90 days from its last new or transfer license approval, the applicant must submit a new application as provided by this section. Required information need not be resubmitted if the information on file with the OCC is current and valid. All fees for new licenses required by §83.3010(a) of this title (relating to Fees) must be paid for each new branch location.

(B) Branch applications received within 90 days from last new or transfer license approval. If the applicant is currently licensed and filing an application for a new office within 90 days from its last new or transfer license approval, and no action, fact, or information has changed that would require a materially different answer than that given in the last new or transfer license application, the applicant must provide the following information:

(i) the branch consent form verifying that there have been no changes from the last application, signed by an authorized individual as provided by paragraph (1)(E) of this section;

(ii) the location information and responsible person for each new branch location, as provided by paragraph (1)(A)(i) and (ii) of this section;

(iii) the fees required by §83.3010(a) of this title must be paid for each new branch location, with the exception of the $200 investigation fee;

(iv) if requested, a new financial statement as provided in paragraph (2)(C) of this section; and

(v) if requested, any other information required by the commissioner that may be necessary to process the branch application.

(C) Last new or transfer license approval. For purposes of this section, a subsequent branch application filed under subparagraph (B) of this paragraph does not qualify as the "last new or transfer license approval."

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

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

SUBCHAPTER H. RETAIL INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §§84.804, 84.808, 84.809

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §84.804, concerning Disclosures and Contract Provisions Required by Texas Finance Code; §84.808, concerning Model Clauses; and §84.809, concerning Permissible Changes.

These amendments govern the plain language contracts used by motor vehicle sales finance licensees under Texas Finance Code, Chapter 348. In general, the purpose of the amendments to §§84.804, 84.808, and 84.809 is to provide clarification, update citations, and remove obsolete language relating to the model provisions for motor vehicle installment sales contracts.

Two issues were brought to the agency's attention by stakeholders. Other amendments relate to issues raised during the examination of Chapter 348 licensees. Additional changes provide technical corrections. In order to address all of the motor vehicle plain language issues at one time, the agency decided that presenting a separate rule action outside of the upcoming rule review would offer the most efficient means and most clarity to licensees needing to update their plain language contracts. The following paragraphs outline the purposes of the amendments for each particular affected provision.

In proposed §84.804(4)(E) concerning itemized charges not included in the cash price of a motor vehicle, the parenthetical at the end of subparagraph (E) has been deleted. During the course of Chapter 348 examinations, the phrase "one aggregate amount" may have led some licensees to believe that the dealer's inventory tax and sales tax could be disclosed under one charge. The agency believes that the parenthetical at the end of §84.804(4)(E) is not necessary and should be removed to provide better clarity for licensees.

In proposed §84.808(9) concerning documentary fee, subparagraphs (C) - (E) have been deleted. These subparagraphs provided the documentary fee disclosures effective before August 2010 and were used as a transition in implementing 2009 legislative changes. Thus, §84.808(9)(C) - (E) contain obsolete language that is no longer necessary and are proposed for deletion.

An issue concerning the prohibition against oral modifications in Figure: 7 TAC §84.808(15) and related integration language in §84.808(37) was brought to the agency's attention by a stakeholder. While the integration language in paragraph (37) could be interpreted to not allow supplemental written agreements or ancillary contracts agreed to by the parties, the prohibition against oral modifications in paragraph (15) did not explicitly connect these supplemental agreements to the retail installment sales contract.
Therefore, in order to harmonize these two provisions and achieve the goal of allowing supplemental written agreements or ancillary contracts to be incorporated into the retail installment sales contract, the following revisions are proposed. First, proposed Figure: 7 TAC §84.808(15) would read as follows: "Any change to this contract must be dated and in writing. Both you and I must sign it. The written change must reference this contract by date, account number, vehicle identification number (VIN), stock number, or by any other reasonable means to be considered part of this contract. No oral changes to this contract are enforceable." The proposed revisions add the words "dated and" to the first sentence, while maintaining the current second sentence. The third sentence is proposed new language providing clarification. And the fourth sentence remains unchanged.

Second, the integration language is proposed for deletion from §84.808(37), resulting in the remaining language relating only to severability. Hence, the proposed changes delete the portion of the title regarding integration, as well as the following first sentence: "This contract contains the entire agreement between you and me relating to the sale and financing of the motor vehicle." The deletion of the previously quoted sentence would clarify that valid written amendments are permitted under §84.808(15). Then, the second sentence of paragraph (37) would be maintained as the severability clause: "If any part of this contract is not valid, all other parts stay valid."

In §84.808(16) concerning finance charge earnings methods, changes are proposed to clarify that the same contract rate disclosure should be provided in situations of a pure sales tax deferment as well as situations where credit life or credit accident and health insurance is required. These amendments are intended to address concerns that have arisen during the Chapter 348 examination process.

The proposed changes regarding sales tax deferment are contained in §84.808(16)(B)(ii) and (C)(ii). These parallel amendments do not revise the model disclosure, but rather subdivide each respective clause into two subclauses: 
(1) Sales tax deferred without required credit life or credit accident and health insurance; and
(2) Sales tax deferred with required credit life or credit accident and health insurance,
with the latter subclauses also including this additional sentence: "If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the sales tax is deferred, the contract rate disclosure contained in clause (l) of this clause must be provided."

Another change relating to finance charge earnings methods has been made in proposed §84.808(16)(C)(i). This third sales tax advance option is intended to provide an appropriate disclosure when a retail seller discloses the APR using a method other than the method used to compute the finance charge, as discovered during previous examinations.

This new calculation option is proposed in §84.808(16)(C)(i)(III), as follows: "If a retail seller discloses the annual percentage rate using a method other than the method that was used to compute the finance charge under the scheduled installment earnings method, the contract rate disclosure should read: 'The contract rate is _______%'. This contract rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge using the scheduled installment earnings method as defined by the Texas Finance Code. Under the scheduled installment earnings method, the Finance Charge is figured by applying the daily rate to the unpaid portion of the Amount Financed as if each payment will be made on its scheduled payment date. The daily rate is 1/365th of the contract rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges."

Proposed §84.808(34)(G) regarding cancellation of optional insurance or service contracts has been amended to incorporate the inclusion of debt cancellation agreements. A stakeholder requested that the agency consider revising this provision to provide a more accurate model clause. The agency agrees with the stakeholder that debt cancellation language should be included in this provision.

Accordingly, the agency has proposed §84.808(34)(G) to read as follows: "Cancellation of optional insurance, debt cancellation agreement, and service contracts. The model clause regarding cancellation of optional insurance, debt cancellation agreement, and service contracts reads: 'This contract may contain charges for insurance, debt cancellation agreement, service contracts, or for services included in the cash price. If I default, I agree that you can claim benefits under these contracts to the extent allowable, and terminate them to obtain refunds of unearned charges to reduce what I owe or repair the motor vehicle."

In proposed §84.808(41) and (43), revisions have been made to the Code of Federal Regulations (C.F.R.) citations to provide more precise references to the provisions cited. These changes also remove the Latin phrase "et seq." ("and the following"), which has become less common in modern legal citations.

And finally, the sample model contract provided in Figure: 7 TAC §84.809(b) incorporates the amendments previously outlined under §84.808(15), (16)(C)(i)(III), (34)(G), and (37), combining the permitted model clauses into one document.

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

For each year of the first five years the amendments are in effect, Commissioner Pettijohn has also determined that the public benefits anticipated as a result of the proposed amendments will be that the commission's rules will provide greater clarity, consistency in the financing of motor vehicles, enhanced protection for consumers, the prevention of unnecessary litigation, and the availability of standard, reliable plain language provisions and forms for motor vehicle sales finance licensees.

Licensees are not required to adopt the model language contained in these rules but have the choice to do so. Further, the clauses being amended in the model contract are optional to the contract itself. Licensees who do not use these provisions in their contracts will not have any required update to their contract forms. Hence, for these licensees, there is no cost to comply with the amendments as proposed.

For licensees who do use the optional provisions in their contract forms, an update will be required either by adding the revised language to their copies of the model form, or by submitting a new non-standard contract submission including similar revisions. Continuing the discussion of licensees who utilize these optional provisions, additional economic costs may be incurred by these licensees in order to comply with this proposal. For those who elect to modify their contract forms in accordance with these amendments, the anticipated costs would include the expenses associated with adding the new language to an existing form, copying a contract or new forms (approximately $0.30-$0.40 per contract or new form), and costs attributable to the loss of obsolete forms inventory. The agency has attempted to lessen the
cost of the last item by providing licensees with a delayed compliance date.

The cost of submission of a non-standard contract form is impossible to predict as one licensee may fill out a single submission form and send that non-standard form to the agency, while another licensee may need to interface with the agency numerous times over whether the text is actually plain language.

Some licensees who use or lease specialized computer software programs for their business may experience some additional costs. These costs are impossible to predict. The agency has attempted to lessen these costs by providing the software programmers with the text of the forms. Whether programmers will use the proposed forms or create their own non-standard contract submission is not predictable. Whether the programmers will charge an additional fee for a document they do not have to draft is also not predictable.

To counteract any of the costs outlined in the preceding paragraphs, the agency would like to note that some of the issues addressed by these proposed changes were identified in prior litigation. Thus, the proposed amendments will provide greater clarity to the industry as well as any courts that may review the retail installment sales contracts and related agreements. Consequently, the amendments may ultimately result in a cost benefit to licensees through the avoidance of litigation had they not updated their forms in accordance with the amendments.

Therefore, aside from the costs of updating contract forms and computer software incurred by those using the amended provisions, there is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no effect on individuals required to comply with the amendments as proposed.

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

Sections 84.808 and 84.809 provide model clauses and a sample model contract for motor vehicle retail installment transactions under Texas Finance Code, Chapter 348. Licensees are not required to adopt the model language contained in the rules. For those licensees utilizing the model provisions, the prior model language is acceptable and the agency will permit licensees to use the prior model language (without a non-standard contract submission) until September 1, 2013, to deplete supplies of existing forms during a transition period after the anticipated effective date of the amendments.

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@occct.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed amendments are published in the Texas Register. At the conclusion of the 31st day after the proposed amendments are published in the Texas Register, no further written comments will be considered or accepted by the commission.

The amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

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


The contract shall have the following disclosures and provisions, as applicable:

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

(4) Itemized charges not included in the cash price, as required by Texas Finance Code, §348.102(a)(7). Itemized charges may include, but are not limited to, the following charges as applicable:

(A) State inspection fee;
(B) Documentary fee;
(C) Dealer's inventory tax;
(D) Sales tax;
(E) Other taxes not included in the cash price (the seller may disclose one aggregate amount for all taxes or may separately itemize one or more of the taxes);
(F) Deputy service fee;
(G) Title fee;
(H) License fee;
(I) Vehicle property insurance;
(J) Credit life and credit disability insurance;
(K) GAP insurance, as authorized by Texas Finance Code, §348.208(b)(4);
(L) Debt cancellation agreement;
(M) Theft protection plan;
(N) Service contract;
(O) Warranty contract; or
(P) Identity recovery service contract.

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

§84.808. Model Clauses.

The following model clauses provide the plain language equivalent of provisions found in contracts subject to Texas Finance Code, Chapter 348.

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

(9) Documentary fee.

(A) - (B) (No change.)

(11) Until August 31, 2010, if the dealer does not charge an amount in excess of $50, the following notice satisfies the requirements of Texas Finance Code, §348.006 if printed in type that is bold-faced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous and within reasonable proximity to the place at which the fee is disclosed. The parenthetical phrase may be inserted at the dealer's option or the disclosure may be made
without the parenthetical phrase if the dealer does not charge an amount in excess of $50 for either ordinary motor vehicles or heavy commercial vehicles or if the contract form is not used for heavy commercial vehicles. The model clause is contained in the Itemization of Amount Financed. The documentary fee clause reads: "A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents and performing services relating to the closing of a sale. A documentary fee may not exceed $50 (for a motor vehicle contract or a reasonable amount agreed to by the parties for a heavy commercial vehicle contract). This notice is required by law."

(D) Until August 31, 2010, if the dealer does not charge an amount in excess of $50, the following notices are sufficient Spanish translations of the documentary fee disclosure required by Texas Finance Code, §348.006. The parenthetical phrase may be inserted at the dealer’s option or the disclosure may be made without the parenthetical phrase if the dealer does not charge an amount in excess of $50 for either ordinary motor vehicles or heavy commercial vehicles or if the contract form is not used for heavy commercial vehicles. The Spanish translation may read:

(1) "Un honorario de documentacion no es un honorario oficial. Un honorario de documentacion no es requerido por la ley, pero puede ser cargado al comprador como gastos de manejo de documentos y para realizar servicios relacionados con el cierre de una venta. Un honorario de documentacion no puede exceder $50 (un contrato de vehiculo automotor o una cantidad razonable acordada por las partes para un contrato de vehiculo comercial pesado). Esta notificacion es requerida por la ley.", or

(2) "Un cargo documental no es un cargo oficial. La ley no exige que se imponga un cargo documental. Pero esto podrria cobrarse a los compradores por el manejo de la documentacion y la prestacion de servicios en relacion con el cierre de una venta. Un cargo documental no puede exceder de $50 para un contrato de vehiculo automotor o una cantidad razonable acordada por las partes para un contrato de vehiculo comercial pesado). Esta notificacion no exige por ley."

(E) Effective September 1, 2010, the documentary fee disclosures contained in paragraphs (9)(C) and (D) of this section are null and void.

(10) - (14) (No change.)

(15) Prohibition against oral modifications. The contract may include a provision barring oral modifications of the contract. A unilateral change to a contract may nevertheless occur as prescribed by the procedures in Texas Finance Code, Chapter 349, Subchapter C. The model clause regarding prohibition against oral modifications reads: Figure: 7 TAC §84.808(15)

(16) Finance charge earnings methods:

(A) (No change.)

(B) True daily earnings method.

(i) (No change.)

(ii) Deferred sales tax. [s]

(I) Sales tax deferred without required credit life or credit accident and health insurance: If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the sales tax is deferred, the contract rate disclosure should read: "The contract rate is 4.7% . This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. The daily rate is 1/365th of the contract rate. The unpaid principal balance subject to a finance charge does not include the late charges, sales tax, or returned check charges."

(II) Sales tax deferred with required credit life or credit accident and health insurance: If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the sales tax is deferred, the contract rate disclosure contained in subclause (I) of this clause must be provided.

(C) Scheduled installment earnings method.

(i) Sales tax advance. At the creditor’s option a creditor may choose one of the following model clauses regarding sales tax advance:

(I) - (II) (No change.)

(III) If a retail seller discloses the annual percentage rate using a method other than the method that was used to compute the finance charge under the scheduled installment earnings method, the contract rate disclosure should read: "The contract rate is 7.9%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge using the scheduled installment earnings method as defined by the Texas Finance Code. Under the scheduled installment earnings method, the Finance Charge is figured by applying the daily rate to the unpaid portion of the Amount Financed as if each payment will be made on its scheduled payment date. The daily rate is 1/365th of the contract rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges."

(ii) Deferred sales tax.

(I) Sales tax deferred without required credit life or credit accident and health insurance: If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the sales tax is deferred, the contract rate disclosure should read: "The contract rate is 9.2%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge using the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. The daily rate is 1/365th of the contract rate. The unpaid principal balance subject to a finance charge does not include the late charges, sales tax, or returned check charges."

(II) Sales tax deferred with required credit life or credit accident and health insurance: If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the sales tax is deferred, the contract rate disclosure contained in subclause (I) of this clause must be provided.

(17) - (33) (No change.)

(34) Default rights and repossession provisions. This paragraph details agreements allowing acceleration of the buyer’s obligation upon the buyer’s default or upon the creditor’s determination of insecurity as permitted by Texas Business and Commerce Code, §1.309. The following provisions are samples of model clauses regarding some of the default rights and remedies of a creditor in a typical motor vehicle installment sale transaction:

(A) - (F) (No change.)

(G) Cancellation of optional insurance, debt cancellation agreement, and [s] service contracts. The model clause regarding cancellation of optional insurance, debt cancellation agreement, and [s] service contracts reads: "This contract may contain charges for insurance, debt cancellation agreement, [s] service contracts, or for
services included in the cash price. If I default, I agree that you can claim benefits under these contracts to the extent allowable, and terminate them to obtain refunds of unearned charges to reduce what I owe or repair the motor vehicle."

(35) - (36) (No change.)

(37) Severability. [Integration and severability.]

(A) The contract may include an integration clause indicating that the parties to the contract intend it to be the final written expression of their agreement. The model clause regarding integration reads: "This contract contains the entire agreement between you and me relating to the sale and financing of the motor vehicle."

(B) The contract may [also] include a severability clause providing that the invalidity of any portion of the contract does not render invalid other parts of the contract that would otherwise be valid. The model clause regarding severability reads: "If any part of this contract is not valid, all other parts stay valid."

(38) - (40) (No change.)

(41) Preservation of consumer's claims and defenses notice. This notice only applies if the motor vehicle financed in the contract was purchased for personal, family, or household use. The preservation of consumer's claims and defenses notice disclosure should be set out from the surrounding text so that the disclosure is in all capitals, boldfaced and in at least 10-point type. The preservation of consumer's claims and defenses notice disclosure, as required by the Federal Trade Commission's preservation of consumer's claims and defenses notice, 16 C.F.R. §433.2 [§§433.1 et seq.], reads: "NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HERUNDER. This provision applies to this contract only if the motor vehicle financed in the contract was purchased for personal, family, or household use."

(42) Used car buyer's guide. The used car buyer's guide disclosure should be set out from the surrounding text so that the disclosure is conspicuous. The disclosure should be prefaced by the words "In this box only, the word "you" refers to the Buyer." The used car buyer's guide disclosure, as required by the Federal Trade Commission's Used Car Regulation, 16 C.F.R. §455.3 [§§455.1 et seq.], reads:

(A) - (B) (No change.)

(43) (No change.)

§84.809. Permissible Changes.

(a) (No change.)

(b) A sample model motor vehicle retail installment sales contract is presented in the following example.

Figure: 7 TAC §84.809(b)

(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 June 15, 2012.

TRD-201203158

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: July 29, 2012

For further information, please call: (512) 936-7621
adopt rules to govern the administration of the CEAP, ESG, HHSP, and LIHEAP WAP.

CROSS REFERENCE TO STATUTE. The repeals are proposed to implement the CEAP, ESG, HHSP, LIHEAP WAP as established by Texas Government Code §§2306.2585, 2306.053, 2306.092, 2306.094, and 2306.097. To the extent that funding sources other than unrestricted funds are utilized, such as housing trust fund balances, any ESG or HHSP activities conducted with such funds may be subject to additional restrictions. The proposed repeals affect no other code, article, or statute.

§5.2. Cost Principles and Administrative Requirements.
§5.3. 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.

Filed with the Office of the Secretary of State on June 18, 2012.
TRD-201203208
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 29, 2012
For further information, please call: (512) 475-3916

10 TAC §5.2, §5.3
The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 5, Subchapter A, §5.2, concerning Definitions; and §5.3, concerning Cost Principles and Administrative Requirements. The purpose of the proposed new sections is to provide for the distribution and administration of ESG and HHSP funds and to renumber the sections for consistency with Department rules.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the new sections, and there will be no effect on local employment or local economy as result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections will be in effect, the public benefit anticipated as a result of the new sections will be that assistance to eligible municipalities will enable them to provide facilities and/or services to address the issues presented by homelessness, thereby improving lives and strengthening communities. There will be no economic cost to any individuals as a result of the proposed new sections.

ECONOMIC IMPACT STATEMENT AND IMPACT ON SMALL AND MICRO BUSINESSES. The proposed new sections will have no negative effect on small businesses; will not negatively impact local employment; will not have an adverse economic affect on small businesses or micro-businesses; and will not negatively impact the local economy.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 29, 2012, to July 30, 2012 to receive input on the proposed new sections. Written comments may be submitted by mail to Texas Department of Housing and Community Affairs, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941; by email to the following address: tdhcarsulecom- ments@tdhca.state.tx.us; or by fax to (512) 475-3539. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. JULY 30, 2012.

STATUTORY AUTHORITY. The new sections are proposed pursuant to the authority of Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs, including specifically §§2306.2585, 2306.053, 2306.092, 2306.094, and 2306.097 which authorize the Department to adopt rules to govern the administration of the CEAP, ESG, HHSP, and LIHEAP WAP.

CROSS REFERENCE TO STATUTE. The new sections are proposed to implement the CEAP, ESG, HHSP, LIHEAP WAP as established by Texas Government Code §§2306.2585, 2306.053, 2306.092, 2306.094, and 2306.097. To the extent that funding sources other than unrestricted funds are utilized, such as housing trust fund balances, any ESG or HHSP activities conducted with such funds may be subject to additional restrictions. The proposed new sections affect no other code, article, or statute.

§5.2. Definitions.
(a) To ensure a clear understanding of the terminology used in the context of the Community Affairs Programs, a list of terms and definitions has been compiled as a reference.

(1) CAA--Community Action Agency.

(2) CFR--Code of Federal Regulations.

(3) Children--Household dependents not exceeding eighteen (18) years of age.

(4) Collaborative Application--An application from two or more organizations to provide services to the target population. If a unit of general local government applies for only one organization, this will not be considered a Collaborative Application. Partners in the Collaborative Application must coordinate services and prevent duplication of services.

(5) Community Action Agencies (CAAs)--Local private and public non-profit organizations that carry out the Community Action Program (CAP), which was founded by the 1964 Economic Opportunity Act to fight poverty by empowering the poor in the United States. Each CAA must have a board consisting of at least one-third elected public officials, not fewer than one-third representatives of low-income individuals and families, chosen in accordance with democratic selection procedures, and the remainder are members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community.

(6) Community Affairs Division (CAD)--The Division at the Department that administers CEAP, CSBG, ESG, HHSP, Section 8 Housing Choice Voucher Program, and WAP.

(7) The Community Services Block Grant (CSBG)--A grant which provides U.S. federal funding for CAAs and other eligible entities that seek to address poverty at the community level. Like other block grants, CSBG funds are allocated to the states and other jurisdictions through a formula.

(8) CSBG Act--The CSBG Act is a law passed by Congress authorizing the Community Services Block Grant. The CSBG Act was amended by the Community Services Block Grant Amendments of 1994 and the Coats Human Services Reauthorization Act of 1998 under 42 U.S.C. §§9901, et seq. The act authorized establishing a community services block grant program to make grants available.
through the program to states to ameliorate the causes of poverty in communities within the states.

(9) Cooling--Modifications including, but not limited to, the repair or replacement of air conditioning units, evaporative coolers, and refrigerators.

(10) CSBG Subrecipient--Includes CSBG eligible entities and other organizations that are awarded CSBG funds.

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

(12) Discretionary Funds--Those CSBG funds maintained in reserve by a State, at its discretion, for CSBG allowable uses as authorized by §675C of the CSBG Act, and not designated for distribution on a statewide basis to CSBG eligible entities and not held in reserve for state administrative purposes.

(13) DOE--The United States Department of Energy.

(14) DOE WAP Rules--10 CFR Part 440 describes the Weatherization Assistance for Low Income Persons as administered through the Department of Energy.

(15) Dwelling Unit--A house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters. This definition does not apply to the ESG or HHSP.

(16) Equipment--A tangible non-expendable personal property including exempt property, charged directly to the award, having a useful life of more than one year, and an acquisition cost of $5,000 or more per unit. For CSBG, CEAP, and WAP, if the unit acquisition cost exceeds $5,000, approval from the Department’s Community Affairs Division must be obtained before the purchase takes place. For ESG, if the unit acquisition cost exceeds $500, approval from the Department’s Community Affairs Division must be obtained before the purchase is made.

(17) Elderly Person--A person who is sixty (60) years of age or older.

(18) Electric Base-Load Measure--Weatherization measures which address the energy efficiency and energy usage of lighting and appliances.

(19) Eligible Entity--Those local organizations in existence and designated by the federal government to administer programs created under the federal Economic Opportunity Act of 1964. This includes community action agencies, limited-purpose agencies, and units of local government. The CSBG Act defines an eligible entity as an organization that was an eligible entity on the day before the enactment of the Coats Human Services Reauthorization Act of 1998 (October 27, 1998), or is designated by the Governor to serve a given area of the State and that has a tripartite board or other mechanism for local governance.


(A) natural disaster;

(B) a significant home energy supply shortage or disruption;

(C) significant increase in the cost of home energy, as determined by the Secretary;

(D) a significant increase in home energy disconnections reported by a utility, a State regulatory agency, or another agency with necessary data;

(E) a significant increase in participation in a public benefit program such as the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. §§2011, et seq.), the national program to provide supplemental security income carried out under Title XVI of the Social Security Act (42 U.S.C. §§1381, et seq.) or the State temporary assistance for needy families program carried out under Part A of Title IV of the Social Security Act (42 U.S.C. §§601, et seq.), as determined by the head of the appropriate federal agency;

(F) a significant increase in unemployment, layoffs, or the number of households with an individual applying for unemployment benefits, as determined by the Secretary of Labor; or

(G) an event meeting such criteria as the Secretary, at the discretion of the Secretary, may determine to be appropriate.

(H) This definition does not apply to ESGP, ESG, or HHSP.

(21) Emergency Shelter Grants Program (ESGP)--A federal grant program established by the Homeless Housing Act of 1986 and incorporated into Title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. §§11371 - 11378) and funded through HUD.

(22) Emergency Solutions Grants (ESG)--A federal grant program authorized in Title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. §§11371 - 11378), as amended by the Homeless Emergency Assistance and Rapid Transition to Housing Act (HEARTH Act). ESG is funded through HUD.

(23) Energy Audit--The energy audit software and procedures used to determine the cost effectiveness of weatherization measures to be installed in a dwelling unit.

(24) Energy Repairs--Weatherization related repairs necessary to protect or complete regular weatherization energy efficiency measures.

(25) Families with Young Children--A family that includes a child age five (5) or younger.

(26) High Energy Burden--Determined by dividing a household's annual home energy costs by the household's annual gross income. The percentage at which energy burden is considered high is defined by data gathered from the State Data Center.

(27) High Energy Consumption--Household energy expenditures exceeding the median of low-income home energy expenditures expressed in the data collected from the State Data Center.

(28) Homeless or homeless individual--An individual as defined by 42 U.S.C. §§11371 - 11378 and 24 CFR §576.2.

(29) Homeless and Housing Services Program (HHSP)--A state funded program established by the State Legislature during the 81st Legislative session with the purpose of providing funds to local programs to prevent and eliminate homelessness in municipalities with a population of 285,500 or more.

(30) Household--Any individual or group of individuals who are living together as one economic unit. For energy programs, these persons customarily purchase residential energy in common or make undesignated payments for energy.

(31) Inverse Ratio of Population Density Factor--The number of square miles of a county divided by the number of poverty households of that county.
(32) Local Units of Government--City, county, council of
governments, and housing authorities.

(33) Low Income--Income in relation to family size:
(41) Outreach--The method that attempts to identify clients
who are in need of services, alerts these clients to service provisions and
benefits, and helps them use the services that are available. Outreach
is utilized to locate, contact and engage potential clients.

(A) For DOE WAP, at or below 200% of the Income
guidelines;
(B) For CEAP, CSBG, and LIHEAP WAP at or below
125% of the Income guidelines;
(C) For ESGP, at or below 100% of the poverty level,
determined in accordance with criteria established by the Director of
the Office of Management and Budget;
(D) For ESG, 30% of the Area Median Income (AMI)
as defined by HUD for persons receiving prevention assistance; and
(E) For HHSP, 50% of the AMI as defined by HUD for
persons receiving emergency essential services, essential services, and
emergency intervention assistance.

(34) Low Income Home Energy Assistance Program (LI-
HEAP)--A federally funded block grant program that is implemented
to serve low income households who seek assistance for their home
energy bills and/or weatherization services.

(35) Migrant Farm worker--An individual or family that is
employed in agricultural labor or related industry and is required to be
absent overnight from their permanent place of residence.

(36) Multifamily Dwelling Unit--A structure containing
more than one dwelling unit. This definition does not apply to ESGP,
ESG, or HHSP.

(37) National Performance Indicator--An individual mea-
sure of performance within the Department's reporting system for mea-
suring performance and results of Subrecipients of funds. There are
currently twelve indicators of performance which measure self-suffi-
ciency, family stability, and community revitalization.

(38) Needs Assessment--An assessment of community
needs in the areas to be served with CSBG funds. The assessment is a
required part of the Community Action Plan per Assurance 11 of the
CSBG Act.

(39) OMB--Office of Management and Budget, a federal
agency.

(40) OMB Circulars--OMB circulars set forth principles
and standards for determining costs for federal awards and establishes
consistency in the management of grants for federal funds. Cost prin-
ciples for local governments are set forth in Office of Management and
Budget (OMB) Circular A-87, and for non-profit organizations in OMB
Circular A-122. Uniform administrative requirements for local govern-
ments are set forth in OMB Circular A-102, and for non-profits in OMB
Circular A-110. OMB Circular A-133 "Audits of States, Local Gov-
ernments, and Non-Profit Organizations," provides audit standards for
governmental organizations and other organizations expending federal
funds. The single audit requirements are set forth under OMB Circular
A-133.

(41) Outreach--The method that attempts to identify clients
who are in need of services, alerts these clients to service provisions and
benefits, and helps them use the services that are available. Outreach
is utilized to locate, contact and engage potential clients.

(42) Performance Statement--A document which identifies
the services to be provided by a CSBG Subrecipient. The document is
an attachment to the CSBG contract entered into by the Department
and the CSBG Subrecipient.

(43) Persons with Disabilities--Any individual who is:
(A) a handicapped individual as defined in §7(9) of the
Rehabilitation Act of 1973;
(B) under a disability as defined in §1614(a)(3)(A) or
§223(d)(1) of the Social Security Act or in §102(7) of the Develop-
mental Disabilities Services and Facilities Construction Act; or
(C) receiving benefits under 38 U.S.C. Chapter 11 or
15.

(44) Population Density--The number of persons residing
within a given geographic area of the state.

(45) Poverty Income Guidelines--The official poverty in-
come guidelines as issued by the U.S. Department of Health and Hu-
man Services annually.

(46) Private Nonprofit Organization--An organization
which has status as a §501(c) tax-exempt entity. Private nonprofit
organizations applying for ESGP, ESG and HHSP funds must be
established for charitable purposes and have activities that include, but
are not limited to, the promotion of social welfare and the prevention
or elimination of homelessness. The entity's net earnings may not in-
ure to the benefit of any individual(s).

(47) Public Organization--A unit of local government, as
established by the Legislature of the State of Texas. Includes, but may
not be limited to, cities, counties, and councils of governments.

(48) Referral--The process of providing information to a
client household about an agency, program, or professional person that
can provide the service(s) needed by the client.

(49) Rental Unit--A dwelling unit occupied by a person
who pays rent for the use of the dwelling unit. This definition does not
apply to ESGP, ESG, or HHSP.

(50) Renter--A person who pays rent for the use of the
dwelling unit. This definition does not apply to ESGP, ESG, or HHSP.

(51) Seasonal Farm Worker--An individual or family that
is employed in seasonal or temporary agricultural labor or related in-
dustry and is not required to be absent overnight from their permanent
place of residence. In addition, at least 20% of the household annu-
alized income must be derived from the agricultural labor or related
industry.

(52) Secretary--Chief Executive of the U.S. Department of
Health and Human Services.

(53) Service--The provision of work or labor that does not
produce a tangible commodity.

(54) Shelter--Defined by the Department as a dwelling unit
or units whose principal purpose is to house on a temporary basis indi-
viduals who may or may not be related to one another and who are not
living in nursing homes, prisons, or similar institutional care facilities.

(55) Single Family Dwelling Unit--A structure containing
no more than one dwelling unit. This definition does not apply to ESGP,
ESG, or HHSP.

(56) Social Security Act--42 U.S.C. §§601, et seq., CSBG
works with activities carried out under Title IV Part A to assist families
to transition off of state programs.

(57) State--The State of Texas or the Texas Department of
Housing and Community Affairs.

(58) Subcontractor--An organization with whom the Sub-
recipient contracts with to administer programs.
(59) Subrecipient--According to each program subchapter, Subrecipient may be defined as organizations with whom the Department contracts with and provides CSBG, ESGP, ESG, HHSP, DOE WAP, or LIHEAP funds.

(60) Supplies--All personal property excluding equipment, intangible property, and debt instruments, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (subject inventions), as defined in 37 CFR Part 401, "Rights to Inventions Made by Non-profit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

(61) TAC--Texas Administrative Code.

(62) Targeting--Focusing assistance to households with the highest program applicable needs.

(63) Terms and Conditions--Binding provisions provided by a funding organization to grantees accepting a grant award for a specified amount of time.

(64) Treatment as a State or Local Agency--For purposes of 5 U.S.C. Chapter 15, any entity that assumes responsibility for planning, developing, and coordinating activities under the CSBG Act and receives assistance under CSBG Act shall be deemed to be a state or local agency.

(65) Units of General Local Government--A unit of local government which has, among other responsibilities, the authority to assess and collect local taxes and to provide general governmental services.


(67) USDHHHS/HHS--U.S. Department of Health and Human Services.

(68) USHUD/HUD--U.S. Department of Housing and Urban Development.

(69) Vendor Agreement--An agreement between the Subrecipient and energy vendors that contains assurance as to fair billing practices, delivery procedures, and pricing for business transactions involving LIHEAP beneficiaries.

(70) WAP--Weatherization Assistance Program.

(71) WAP PAC--Weatherization Assistance Program Policy Advisory Council. The WAP PAC was established by the Department in accordance with 10 CFR §440.17 to provide advisory services in regards to the WAP program.

(72) Weatherization Material--The material listed in Appendix A of 10 CFR Part 440.

(73) Weatherization Project--A project conducted in a single geographical area which undertakes to reduce heating and cooling demand of dwelling units that are energy inefficient.

§5.3. Cost Principles and Administrative Requirements.

Except as expressly modified by the terms of a contract, Subrecipients shall comply with the cost principles and uniform administrative requirements set forth in the Uniform Grant and Contract Management Standards, 34 TAC §§20.421, et seq. (the "Uniform Grant Management Standards") provided, however, that all references therein to "local government" shall be construed to mean Subrecipient. Non-profit Subrecipients of ESGP, ESG, and DOE WAP do not have to comply with UGMS. For federal funds, Subrecipients will follow OMB Circulars as interpreted by the federal funding agency.

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

Filed with the Office of the Secretary of State on June 18, 2012.

TRD-201203209

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: July 29, 2012

For further information, please call: (512) 475-3916

10 TAC §§5.4, 5.8, 5.10, 5.13, 5.17, 5.19, 5.20

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 5, Subchapter A, §§5.4, 5.8, 5.10, 5.13, 5.15 - 5.17, 5.19, and 5.20, concerning references to the Emergency Solutions Grants and the Homeless Housing and Services Program.

The purpose of the proposed amendments is to: add references to the Emergency Solutions Grants Program (ESG), a new program to be funded through the U.S. Department of Housing and Urban Development Homeless Housing and Services Program (HHSP); to remove any reference to Homelessness Prevention Rapid Re-Housing Program, an American Recovery and Reinvestment Act program, which will be closed out in the next 60 days; add definitions for the Emergency Shelter Grants Program and the ESG; revise the definition for homeless; add the income eligibility requirements for ESG and HHSP; revise the federal poverty levels for the Department of Energy Weatherization Assistance Program (WAP), based on updated LIHEAP program guidance from the U.S. Department of Health and Human Services, and LIHEAP WAP and the Comprehensive Energy Assistance Program; remove the audit threshold of $500,000 and state that the requirements to adhere to the threshold requirements of Office of Management and Budget Circular A-133; add definitions for OMB Circulars; specify the cost principles and administrative requirements applicable to programs; add request for qualification; revise the declaration of income statement documentation term to read income documentation; and also add a definition for U.S. Department of Housing and Urban Development and U.S. Department of Health and Human Services.

FISCAL NOTE, Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed amendments will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections, and there will be no effect on local employment or local economy as result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated as a result of the amended sections will be that assistance to eligible municipalities will enable them to provide facilities and/or services to address the issues presented by homelessness, thereby improving lives and strengthening communities. There will be no economic cost to any individuals as a result of the proposed amended sections.

ECONOMIC IMPACT STATEMENT AND IMPACT ON SMALL AND MICRO BUSINESSES. The proposed amendments will have no negative effect on small businesses; will not negatively impact local employment; will not have an adverse economic...
affect on small businesses or micro-businesses; and will not negatively impact the local economy.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 29, 2012, to July 30, 2012 to receive input on the proposed amendments. Written comments may be submitted by mail to Texas Department of Housing and Community Affairs, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941; by email to the following address: tdhcarulecomments@tdhca.state.tx.us; or by fax to (512) 475-3539. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. JULY 30, 2012.

STATUTORY AUTHORITY. The amendments are proposed pursuant to the authority of Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs, including specifically §§2306.2585, 2306.053, 2306.092, 2306.094, and 2306.097 which authorize the Department to adopt rules to govern the administration of the CEAP, ESG, HHSP, and LIHEAP WAP.

CROSS REFERENCE TO STATUTE. The amendments are proposed to implement the CEAP, ESG, HHSP, LIHEAP WAP as established by Texas Government Code §§2306.2585, 2306.053, 2306.092, 2306.094, and 2306.097. To the extent that funding sources other than unrestricted funds are utilized, such as housing trust fund balances, any ESG or HHSP activities conducted with such funds may be subject to additional restrictions. The proposed amendments affect no other code, article, or statute.

§5.4. Prohibitions.


(b) Section 678(F)(b)(2) of the Community Services Block Grant (CSBG) [CSBG] Act prohibits the use of program funds for political activity, voter registration activity or voter registration. The Hatch Act, 5 U.S.C.[s] Chapter 15 and the amendments to the Hatch Act and the repeal of §675(e) and §675(C)(6) of the CSBG [Community Services Block Grant (CSBG)] Act do not affect the prohibition of §678(F)(b)(2).

(c) Knowingly hiring an undocumented worker is prohibited, 8 U.S.C. §1324a.

(d) Discrimination is prohibited.


(2) All Subrecipients [subrecipients] receiving federal funds must be equal opportunity employers and render services without regard to race, color, religion, sex, familial status, national origin, age, disability, handicap, political affiliation or belief. Information on equal opportunity and nondiscrimination shall be made available to participants, employees, subcontractors, and interested parties.

§5.8. Inventory Report.

(a) The Department requires the submission of an inventory report on an annual basis to be submitted to the Department, no later than sixty (60) days after the original end date of the contract.

(b) Vehicles, tools, and equipment purchased with funds under a contract with the Department, must be inventoried and reported to the Department during the contract period.

(c) The inventory report is cumulative and is used for vehicles, tools, and equipment with a useful life of one year or [46] more and a unit acquisition cost of greater than $5,000 for CSBG, CEAP and WAP [Community Services Block Grant (CSBG), Comprehensive Energy Assistance Program (CEAP), Weatherization Assistance Program (WAP)] and greater than $500 for ESG, ESGP, and HHSP [Emergency Shelter Grant Program (ESGP)]. Property must be inventoried and reported on the Cumulative Inventory Report form. The form and instructions are found on the Department's website.

§5.10. Procurement Standards.

(a) In addition to the requirements described in §5.3 of this chapter (relating to Cost Principles and Administrative Requirements), entities must follow the requirements in [Procurement procedures must meet minimum guidelines, according to Office of Management and Budget (OMB) Circulars A-87, A-102, A-110, A-123 (as applicable), the Uniform Grant Management Common Rule,] Texas Government Code, Chapter 783[4], and 10 CFR Part 600 (Financial Assistance Rules).

(b) All subrecipients including non-profits must comply with all of the referenced statutes and regulations listed in subsection (a) of this section. In case of any conflict between the OMB Circulars or federal laws and state laws involving federal funds, the federal law or OMB Circulars will prevail.

(b) [(o) Additional Department requirements are:

(1) Small purchase procedures:

(A) This procedure may be used only on those services, supplies, or equipment costing in the aggregate of $25,000 or less. For Emergency Shelter Grant Program (ESGP), Emergency Solutions Grant (ESG), and the Homeless Housing and Services Program (HHSP), the threshold is $500 and more per unit;

(B) Subrecipient must establish a clear, accurate description of the specifications for the technical requirements of the material, equipment, or services to be procured; and

(C) Subrecipient must obtain a written price or documented rate quotation from an adequate number of qualified sources. An adequate number is, at a minimum, three different sources.

(2) Sealed bids:

(A) Subrecipient must formally advertise, for a minimum of three (3) days, in newspapers or through notices posted in public buildings throughout the service area. Advertising beyond the Subrecipient's [subrecipients] service area is allowable and recommended by the Department. The advertisement should include, at a minimum, a response time of fourteen (14) days prior to the closing date of the bid request. A Government Entity [Cities and counties] must comply with the statutorily imposed publication requirements in addition to those requirements stated herein; and

(B) When advertising for material or labor services, Subrecipient [subrecipient] shall indicate a period for which the materials or services are sought (e.g., for a one-year contract with an option to renew for an additional four (4) years). This advertised time period shall determine the length of time which may elapse before re-advertising for material or labor services, except that advertising for labor services must occur at least every five (5) years.

(3) Competitive proposals:

(A) The Request for Proposal (RFP) or Request for Qualification (RFQ) must be publicized. The preferred method of
advertising is the local service area newspapers. This advertisement should, at a minimum, allow fourteen (14) days before the RFP or RFQ is due. The due date must be stated in the advertisement; and —

(B) The time period for services shall be one year, plus four (4) additional years at a maximum.

(4) Non-competitive proposals:

(A) The service, supply, or equipment is available only from a single source;

(B) A public emergency exists preventing the time required for competitive solicitation; and

(C) After solicitation of a number of sources, competition is determined inadequate.

(5) Required contract provisions shall include the following contract provisions or conditions in procurement contracts or subcontracts:

(A) Contracts in excess of $25,000 shall include contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances where subcontractors violate or breach the contract terms, and provide for such remedial actions as may be appropriate;

(B) All contracts in excess of $25,000 shall include suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the Subrecipient [subrecipient];

(C) Contracts shall include a provision with regard to independent subcontractor status to hold harmless and indemnify the Subrecipient [subrecipient] from and against any and all claims, demands and course of action asserted by any third party arising out of or in connection with the services to be performed under contract;

(D) Contracts shall include a provision regarding conflict of interest. Subrecipient's employees, officers, and/or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from subcontractors, or potential subcontractors; and

(E) Contracts shall include a provision to prevent fraud and abuse.

(i) Subrecipient shall establish, maintain, and utilize internal control systems and procedures sufficient to prevent, detect, and correct incidents of waste, fraud, and abuse in all Department funded programs and to provide for the proper and effective management of all program and fiscal activities funded by this contract. Subrecipient's internal control systems and all transactions and other significant events must be clearly documented and the documentation made readily available for review by Department.

(ii) Subrecipient shall give Department complete access to all of its records, employees, and agents for the purpose of monitoring or investigating the program. Subrecipient shall fully cooperate with Department's efforts to detect, investigate, and prevent waste, fraud, and abuse. Subrecipient shall immediately notify the Department of any identified instances of waste, fraud, or abuse.

(iii) Department will notify the funding source upon identification of possible instances of waste, fraud, and abuse or other serious deficiencies.

(iv) Subrecipient may not discriminate against any employee or other person who reports a violation of the terms of this contract or of any law or regulation to Department or to any appropriate law enforcement authority, if the report is made in good faith.

(F) Contracts shall include a provision to the effect that any alterations, additions, or deletions to the terms of the contract which are required by changes in federal law and regulations or state statute are automatically incorporated into the contract without written and administrative code amendment hereto, and shall become effective on the date designated by such law and or regulation; and any alterations, additions, or deletions to the terms of the contract shall be amended hereto in writing and executed by both parties to the contract.

(G) Contracts shall include the following provision assuring legal authority to sign the contract.

(i) Subcontractor represents that it possesses the practical ability and the legal authority to enter into the contract, receive and manage the funds authorized by the contract, and to perform the services subcontractor has obligated itself to perform under the contract.

(ii) The person signing the contract on behalf of the subcontractor warrants that he/she has been authorized by the subcontractor to execute the contract on behalf of the subcontractor and to bind the subcontractor to all terms set forth in the contract.

(iii) Department shall have the right to suspend or terminate the contract if there is a dispute as the legal authority of either the subcontractor or the person signing the contract to enter into the contract or to render performances thereunder. Should such suspension or termination occur, the subcontractor is liable to the Subrecipient [subrecipient] for any money it has received for performance of provisions of the contract.


(a) The following requirements relate only to construction or facility improvements.

(1) For contracts exceeding $100,000 the Department may accept the bonding policy and requirements of the Subrecipient [subrecipient], provided the Department has made a written finding that the Department is adequately protected.

(2) For contracts in excess of $100,000, and for which the Subrecipient [subrecipient] cannot make a determination that the Department's interest is adequately protected, a "bid guarantee" from each bidder equivalent to 5% [five (5)] of the bid price shall be required. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified. A bid bond in the form of all of the following may represent a "bid guarantee."

(A) A performance bond on the part of the Subrecipient [subrecipient] for 100% of the contract price. A "performance bond" is one executed in connection with a contract, to secure fulfillment of all subcontractors' obligations under such contract.

(B) A payment bond on the part of the subcontractor for 100% of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(C) Where bonds are required, in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR Part 223, "Surety Companies Doing Business with the United States."
§5.15. Federal Funding Accountability and Transparency Act (FFATA).

All entities receiving federal funds of $25,000 or more must be registered in the federal Central Contractor Registration (CCR) and have a current Data Universal Numbering System (DUNS) number.

§5.16. Monitoring of Subrecipients.

(a) The Department's Compliance Division [Community Affairs Division (CAD)] is responsible for ensuring that the Community Services Block Grant (CSBG), Comprehensive Energy Assistance Program (CEAP), Weatherization Assistance Program (WAP), and Emergency Shelter Grant Program (ESGP) program activities are completed and that the funds are expended in accordance with the contract provisions and applicable State and Federal rules, regulations, policies, and related statutes. In order to ensure such, the Department will conduct monitoring reviews of the Subrecipients [subrecipients] to evaluate the effectiveness of the Subrecipient [subrecipient's] performance and program compliance through on-site and desk monitoring as described in §5.15 of this chapter (relating to Federal Funding Accountability and Transparency Act (FFATA)) following the requirements of §678B of PL 105-285 Subtitle B, §2605(B)(10) of PL 97-35, as amended, 10 CFR §440.23(d), and 24 CFR §576.61 and §576.57(f) and (g), respectively.

(1) The Department [CAD] employs a Subrecipient [subrecipient] monitoring procedure that is based upon an assessment of associated risks. The factors may include but are not limited to the status of the most recent monitoring report, timeliness of grant reporting, results of the last on-site monitoring review, number and funding amount of Department funded contracts, final expenditure rate, and single audit status or other factors. Ranking of Subrecipients [subrecipients] will determine whether an on-site review or a desk review is completed unless Department management determines an on-site review is needed.

(2) The Department [CAD] may conduct unannounced on-site monitoring reviews of a Subrecipient [subrecipients] identified as at risk for contract termination, if deficiencies identified from prior monitoring activities persist or remain unresolved for an unreasonable period of time. In the event of reports of fraud and abuse or other extenuating circumstances the Department may make an unannounced on-site monitoring review.

(3) Follow-up reviews may be performed to ensure implementation of corrective action of Subrecipients [subrecipients] that failed to meet the goals, standards, and requirements established by the Department.

(4) Technical assistance and training will be provided to the Subrecipient [subrecipient] to address program deficiencies.

(5) A monitoring instrument is used to perform monitoring reviews. Support documentation is retained by the Department to verify: the achievement of performance goals; conduct of eligible activities; and compliance with other contractual regulatory provisions and financial accountability. Monitoring reviews of Subrecipients [subrecipients] also include reviewing annual financial reports and any related management letters and financial documents.

(6) Following the onsite monitoring review, a monitoring report is prepared and submitted to the Subrecipient [subrecipients] outlining any administrative, program, and financial deficiencies. The monitoring report also includes notes, recommended improvements, corrective actions or a corrective action plan. Subrecipients must respond to the monitoring report within forty-five (45) calendar days from the date of the monitoring report except for WAP Subrecipients [subrecipients] whom must respond within thirty (30) calendar days.

(A) Finding—The written description of a deficient condition which is significantly substandard according to the monitoring standards. Findings may also be deficiencies found with regard to compliance with program rules, required cost principles, federal, state and/or local laws, and generally accepted accounting procedures or Generally Accepted Accounting Principles. In general, findings require corrective action to create an acceptable level of risk for disbursement of funds. The description of a finding might include the cause and effect of the deficient condition.

(B) Recommended Improvement—Suggested best practice(s) to enhance program, operational, financial, or administrative practices.

(C) Note—An explanatory tool to further describe and clarify findings or recommended improvements. A note may also be used to include additional information related to the monitoring review but not related to a finding or recommended improvement.

(7) Subrecipients are required to have at a minimum the following documents available, and any other requested documents, for the monitoring review:

(A) Roster of staff (name, title, salary and status) [All Community Affairs programs];

(B) Current agency organization chart;

(C) List of Board of Directors to include: names, addresses and telephone numbers, tenure on the board, section represented by the board member, list of committees—CSBG [and] ESGP [and] ESG, and HHSP;

(D) Board election/selection materials—CSBG;

(E) Board minutes (previous six meetings) and attendance roster—CSBG [and] ESGP, ESG, and HHSP;

(F) List of neighborhood centers with names of staff—CSBG and CEAP;

(G) Personnel policies;

(H) Bylaws—CSBG [and] ESGP, ESG, and HHSP;

(I) Travel policies and records;

(J) Chart of accounts;

(K) Accounting records (journals/ledgers) and support documentation;

(L) Amount of Cash on Hand (at time of monitoring);

(M) Bank reconciliation records;

(N) Agency's proof of fidelity bond coverage;

(O) Documentation of match requirements—ESGP, ESG, and when applicable for HHSP;

(P) Closeout data for prior program year—CEAP and WAP;

(Q) Access to client files and documentation of performance—[All Community Affairs programs];
(R) Income documentation [Declaration of Income Statement (DIS) Policy/Procedure—All Community Affairs programs];
(S) Appeals Procedures—CEAP, ESG, ESGP, and WAP;
(T) Subcontract agreements with appropriate procurement
packages (if applicable)[—All Community Affairs programs];
(U) Procurement policy;
(V) Documentation of current contract inventory[—All
Community Affairs programs];
(W) Documentation of coordination with other local
programs (including contact person and phone numbers)—CSBG;
(X) Copies of most recent monitoring reports and/or
performance reviews of all programs administered by the organization;
(Y) Copy of the most recent Single Audit Report—Organizations that expend more than the expenditure threshold under
OMB Circular A-133 [§$500,000 in federal funds during a fiscal year]
must have a single audit conducted for that year (A-133 Subpart
B.200). Organizations that do not exceed the expenditure threshold
under OMB Circular A-133 [§$500,000 federal fund expenditure
threshold] are exempt from the single audit requirements. If an
organization is not required to have a single audit performed, the organization must provide the end-of-the-year financial statements
(balance sheet, income statement, and statement of cash flow); and
(Z) If applicable, documentation of the most recent
Head Start Onsite Monitoring Document review, including results,
responses, and current status—CSBG.

(b) Subrecipients not exempt from the single audit requirements
are responsible for submitting their Single Audit Report within
thirty (30) days of completion of their audit and no later than nine (9)
months after the end of the audit period (fiscal year end) to the Department's [Portfolio Management and] Compliance Division as well as to the

(c) Monitoring reviews of Subrecipients [subrecipients] will
include a review of the Subrecipient's [subrecipients] annual financial
reports and any related management letters and financial documents.


(a) Subrecipients that have entered into contract with the Department to administer programs are required to follow state and federal
laws and regulations and rules governing these programs.

[bh] Except as expressly modified by law or the terms of a subrecipient's contract, the subrecipient shall comply with the cost principles
and uniform administrative requirements set forth in the Uniform
Grant and Contract Management Standards (UGMS), 1 TAC §§5.141, et seq.

[bh] If a Subrecipient [subrecipient] fails to comply with program [the] requirements, rules, or [and] regulations [of the CSBG,
CEAP, WAP, or ESGP programs] and in the event monitoring or other
reliable sources reveal material deficiencies in performance, or if the Subrecipient [subrecipient] fails to correct any deficiency within
the time allowed by federal or state law, the Department will apply one or
more of the following sanctions:

1. Deny the Subrecipient's [subrecipient's] requests for advances
and place it on a cost reimbursement method of payment until
proof of compliance with the rules and regulations are received by the Department;

2. Withhold all payments from the Subrecipient [subrecipient] (both reimbursements and advances) until proof of com-
plianc with the rules and regulations are received by the Department,
reduce the allocation of funds (with the exception of Community
Services Block Grant (CSBG) funds to eligible entities as described
in §5.206 of this chapter (relating to Termination and Reduction
of Funding) and as limited for LIHEAP funds as outlined in Texas
Government Code, Chapter 2105) or impose sanctions as deemed
appropriate by the Department's [Department] Executive Director,
at any time, if the Department identifies possible instances of fraud,
abuse, fiscal mismanagement, or other serious deficiencies in the
Subrecipient's [subrecipients'] performance;

3. Suspend performance of the contract or reduce funds
until proof of compliance with the rules and regulations are received
by the Department or a decision is made by the Department to initiate
proceedings for contract termination;

4. Elect not to provide future grant funds to the
Subrecipient [subrecipient] until appropriate actions are taken to
ensure compliance; or

5. Terminate the contract. Adhering to the requirements
governing each specific program administered by the Department, as
needed, the Department may determine to proceed with the termination
of a contract, in whole or in part, at any time the Department establishes
there is good cause for termination. Such cause may include, but is not
limited to, fraud, abuse, fiscal mismanagement, or other serious defi-
cencies in the Subrecipient's [subrecipient's] performance. For CSBG
contract termination procedures, please refer to §5.206 of this chapter
(relating to Termination and Reduction of Funding).

[c] [bh] Contract Close-out. When the Department moves to
terminate a contract, the following procedures will be implemented.

1. The Department will issue a termination letter to the
Subrecipient [subrecipient] no less than thirty (30) days prior to termi-
nating the contract. The Department may determine to take one of
the following actions: suspend funds immediately; establish a cost re-
imbursement plan for closeout proceedings; or provide instructions to
the Subrecipient [subrecipient] to prepare a proposed budget and writ-
ten plan of action that supports the closeout of the contract. The plan
must identify the name and current job titles of staff that will perform
the close-out and an estimated dollar amount to be incurred. The
Department will respond within ten (10) working days from receipt of the plan.

2. If the Department determines that cost reimbursement
is an appropriate method of providing funds to accomplish closeout, the
Subrecipient [subrecipient] will submit backup documentation for all
current expenditures associated with the closeout. The required docu-
ment will include, but not be limited to, the chart of accounts, de-
tailed general ledger, revenue and expenditure statements, time sheets,
payment vouchers and/or receipts, and bank reconciliations.

3. No later than thirty (30) days after the contract is termi-
nated, the Subrecipient will take a physical inventory of client files,
including case management files, and will submit to the Department an
inventory of equipment with a unit acquisition cost of $5,000 or greater
for Comprehensive Energy Assistance Program (CEAP), Weatheriza-
tion Assistance Program (WAP) and Community Services Block Grant
(CSBG) [CSBG] or a unit acquisition cost of $500 or greater for ESGP,
ESG, and HHSP.

4. The terminated Subrecipient [subrecipient] will have
thirty (30) days from the date of the physical inventory to copy all cur-
tent client files. Client files must be boxed by county of origin. Current
and active case management files also must be copied, inventoried, and
boxed by county of origin.
(5) Within thirty (30) days following the Subrecipient’s due date for copying and boxing client files, Department staff will retrieve copied client files.

(6) The terminated Subrecipient will prepare and submit no later than sixty (60) days from the date the contract is terminated, a final report containing a full accounting of all funds expended under the contract.

(7) A final monthly expenditure report and a final monthly performance report for all remaining expenditures incurred during the close-out period must be received by the Department no later than sixty (60) days from the date the Department determines that the closeout of the program and the period of transition are complete.

(8) The Subrecipient will submit to the Department no later than sixty (60) days after the termination of the contract, an inventory of non-expendable personal property [as defined in Attachment N of the Uniform Management Standards] acquired in whole or in part with funds received under the contract.

(9) The Department may transfer title to equipment having a unit acquisition cost (the net invoice unit price of an item of equipment) of:

(A) $5,000 or greater for CEAP, CSBG, and WAP; or

(B) $500 or greater for ESF, ESGP, and HHSP, to the Department or to any other entity receiving funds under the program in question. The Department will make arrangements to remove equipment covered by this paragraph within ninety (90) days following termination of the contract.

(10) Upon selection of a new service provider, the Department will transfer to the new provider client files and, as appropriate, equipment.

(11) As required by OMB Circular A-133, a current year single audit must be performed for all agencies that have exceeded the federal expenditure threshold under OMB Circular A-133 [of $500,000]. The Department will allow a proportionate share of program funds to pay for accrued audit costs, when an audit is required, for a single audit that covers the date up to the closeout of the contract. The terminated Subrecipient must have a binding contract with a CPA firm on or before the termination date of the contract. The actual costs of the single audit and accrued audit costs including support documentation must be submitted to the Department no later than sixty (60) days from the date the Department determines the close-out is complete.

(12) Subrecipients shall submit within sixty (60) days after the date of the close-out process all financial, performance, and other applicable reports to the Department. The Department may approve extensions when requested by the Subrecipient. However, unless the Department authorizes an extension, the Subrecipient must abide by the sixty (60) day contractual requirement of submitting all referenced reports and documentation to the Department.


(a) The Department has defined eligibility for program assistance under the poverty income guidelines provided annually by the Secretary of the U.S. Department of Health and Human Services (USDHHS). For ESG and HHSP, Subrecipients will adhere to 24 CFR §5.609, subject to the revisions of The Housing and Economic Recovery Act of 2008 (HERA), P.L. 110-289.

(b) For USDHHS funded programs, Subrecipients will use the following list of included and excluded income to determine eligibility for all programs.

(1) Included Income:

(A) Temporary Assistance for Needy Families (TANF);

(B) Money, wages and salaries before any deductions;

(C) Net receipts from non-farm or farm self-employment (receipts from a person’s own business or from an owned or rented farm after deductions for business or farm expenses);

(D) Regular payments from social security;

(E) Railroad retirement;

(F) Unemployment compensation;

(G) Strike benefits from union funds;

(H) Worker’s compensation;

(I) Training stipends;

(J) Alimony;

(K) Military family allotments;

(L) Private pensions;

(M) Government employee pensions (including military retirement pay);

(N) Regular insurance or annuity payments;

(O) Dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts; and net gambling or lottery winnings.

(2) Excluded Income:

(A) Social Security Disability Insurance (SSDI) payments;

(B) Supplemental Security Income (SSI) payments;

(C) Capital gains; any assets drawn down as withdrawals from a bank;

(D) The sale of property, a house, or a car;

(E) One-time payments from a welfare agency to a family or person who is in temporary financial difficulty;

(F) Tax refunds, gifts, loans, and lump-sum inheritances;

(G) One-time insurance payments, or compensation for injury;

(H) Non-cash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits;

(I) Food or housing received in lieu of wages;

(J) The value of food and fuel produced and consumed on farms;

(K) The imputed value of rent from owner-occupied non-farm or farm housing;

(L) Federal non-cash benefit programs as Medicare, Medicaid, Food Stamps, and school lunches;

(M) Housing assistance and combat zone pay to the military;
The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 5, Subchapter K, §§5.2001 - 5.2012, concerning the Emergency Solutions Grants (ESG). The purpose of the proposed new sections is to set forth policies and procedures governing the administration of ESG funds within the State of Texas.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the new sections, and there will be no effect on local employment or local economy as result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections will be in effect, the public benefit anticipated as a result of the new sections will be that assistance to eligible applicants will enable them to provide facilities and/or services to address the issues presented by homelessness, thereby improving lives and strengthening communities. There will be no economic cost to any individuals as a result of the proposed new sections.

ECONOMIC IMPACT STATEMENT AND IMPACT ON SMALL AND MICRO BUSINESSES. The proposed new sections will have no negative effect on small businesses; will not negatively impact local employment; will not have an adverse economic affect on small businesses or micro-businesses; and will not negatively impact the local economy.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 29, 2012, to July 30, 2012 to receive input on the new sections. Written comments may be submitted to Texas Department of Housing and Community Affairs, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 475-3539. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. JULY 30, 2012.

STATUTORY AUTHORITY. The new sections 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, including specifically §§2306.094 which authorizes the Department to administer the state’s allocation of federal funds provided under the ESG Program (42 U.S.C. §§11371 et seq.), as amended, or its successor program, and any other federal funds provided for the benefit of homeless individuals and families.

CROSS REFERENCE TO STATUTE. The new sections are proposed to implement the ESG program as established by Texas Government Code §2306.094. The proposed new sections affect no other code, article, or statute.

§5.2001. Background

(a) Emergency Solutions Grants (ESG) funds are federal funds awarded to the State of Texas by the U.S. Department of Housing and Urban Development (HUD) and administered by the Texas Department of Housing and Community Affairs (the "Department").

(b) The regulations in this subchapter govern the administration of ESG funds and establish policies and procedures for use of ESG funds to meet the purposes contained in Title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. §§11371 - 11378) (the "Act"), as amended by the Homeless Emergency Assistance and Rapid Transition to Housing Act (HEARTH Act).
(c) ESG program participants shall comply with the regulations applicable to the ESG program as indicated in this subchapter and as set forth in 24 CFR Part 576 and 24 CFR Part 91 (the "Federal Regulations"). ESG program participants must also follow all other applicable federal and state statutes and the regulations established in this chapter, as amended or suspended.

(d) In the event that Congress, the Texas Legislature, or HUD add or change any statutory or regulatory requirements concerning the use or administration of these funds, ESG program participants shall comply with such requirements.

§5.2002. Purpose and Use of Funds.

(a) The purpose of Emergency Solutions Grants (ESG) is to assist people to quickly regain stability in permanent housing after experiencing a housing crisis and/or homelessness.

(b) ESG eligible activities are:

(1) the rehabilitation or conversion of buildings for use as emergency shelter for the homeless;

(2) the payment of certain expenses related to operating emergency shelters;

(3) essential services related to emergency shelters and street outreach for the homeless;

(4) homelessness prevention and rapid re-housing assistance;

(5) Homeless Management Information Systems (HMIS) activities; and

(6) administrative costs.

(c) The Department's Governing Board, Executive Director or his/her designee may limit activities in a given funding cycle or by contract.


The Department will post on its website the distribution plan for Emergency Solution Grants (ESG) funds.


(a) Eligible applicants are units of general purpose local government and those private nonprofit organizations that are secular or religious organizations as described in §501(c) of the Internal Revenue Code of 1986, are exempt from taxation under Subtitle A of the Code, have an accounting system and a voluntary board, and practice non-discrimination in the provision of assistance.

(b) The Department reserves the option to limit eligible applicant entities in a given funding cycle.


Emergency Solutions Grants (ESG) funds must be used to assist homeless persons or persons at-risk of homelessness as defined in 24 CFR Parts 91 and 576, excluding §76.21(1)(ii)(G).


(a) The Department will obligate funds within sixty (60) days of receiving the signed grant agreement from the U.S. Department of Housing and Urban Development (HUD).

(b) Upon approval by the Department's Board of Directors or its designee, applicants receiving Emergency Solutions Grants (ESG) funds shall enter into and execute an agreement for the receipt of ESG funds.

(c) The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver modifications and/or amendments to the ESG contract.

(d) The Department reserves the right to deobligate funds.

(e) The Department reserves the right to negotiate the final grant amounts and local match with successful applicants.

§5.2007. Reporting.

(a) Subrecipients must submit via an electronic web-based system a monthly expenditure and performance report on or before the fifteenth (15th) day of each month following the reported month of the contract period.

(b) Even if a fund reimbursement is not being requested, an expenditure report must be submitted electronically no later than the fifteenth (15th) day of each month of the grant period. A final expenditure report must be submitted within thirty (30) days after the Emergency Solutions Grants (ESG) contract ends.


(a) Program income is gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. Program income received and expended during the contract period will count toward meeting the Subrecipients' matching requirements, provided the costs are eligible Emergency Solutions Grants (ESG) costs that supplement the ESG program.

(b) In addition, utility and security deposit refunds from vendors should be treated as program income.

(c) In accounting for program income, the Subrecipient must accurately reflect the receipt of such funds separate from the receipt of federal funds and Subrecipient funds.

(d) Program income received by the Subrecipient during the two (2) years following the end of the contract period must be returned to the Department. Program income must be returned within ten (10) working days of receipt by the Subrecipient.

(e) Program income received by the Subrecipient after the two (2) year period described in subsection (d) of this section has expired, can be retained by the Subrecipient.


(a) The Subrecipient must follow all the recordkeeping requirements in 24 CFR §576.500(y) for a period of at least five (5) years from the date of the closeout of the program with the exception of records related to renovation or conversion of an emergency shelter which must be retained for ten (10) years.

(b) The Department, or any of the Department's duly authorized representatives, shall have access to all books, accounts, records, reports, files, audits, and other papers or property of Subrecipients and contractors pertaining to funds provided under this subchapter for the purpose of making surveys, audits, examinations, excerpts and transcripts.

(c) All records shall be sufficient to determine compliance with the requirements and primary objectives of the Emergency Solutions Grants (ESG) program and all other applicable laws and regulations. All records shall be supported by source documentation.


(a) Subrecipients that rehabilitate or convert buildings for use as a shelter will be required to enter into a land use restriction agreement or other restrictive covenant that insures a long-term use restriction of the building.

(b) Subrecipients should use proceeds from the disposition of equipment acquired with Emergency Solutions Grants (ESG) funds in a manner which provides benefit to the homeless in their community and complies with HUD requirements.

(a) Subrecipients shall have the responsibility for ensuring that Emergency Solutions Grants (ESG) funds are expended as stated in the grant agreement and in conformance with all applicable federal and state laws, regulations, and guidelines. The Department may prescribe procedures for ensuring compliance with the provision of this section.

(b) The Department may evaluate activities conducted under this subchapter and their effectiveness in meeting the ESG program goals. This may be considered in future Departmental funding decisions.

§5.2012. Redistribution/Reallocation of Additional Grant Funds and Unexpended Funds.

The Department will determine the most equitable and beneficial use of any additional grant year appropriation, unexpended or deobligated program funds. In determining the distribution of funds, the Department will consider program performance and expenditure rates of eligible applicants or Subrecipients.

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

Filed with the Office of the Secretary of State on June 18, 2012.
TRD-201203210
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 29, 2012
For further information, please call: (512) 475-3916

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

16 TAC §25.52

The Public Utility Commission of Texas (commission) proposes amendments to §25.52, relating to Reliability and Continuity of Service. The proposed amendments will implement Senate Bill 937 enacted in the 82nd legislative session and now codified in Public Utility Regulatory Act (PUA) §38.072, which requires an electric utility to give nursing facilities, assisted living facilities, and hospice facilities the same priority that it gives to a hospital in the utility’s emergency operations plan for restoring power after an extended outage. Project Number 40269 is assigned to this proceeding.

Regina Erales, Reliability and Emergency Management Coordinator, Infrastructure and Reliability Division, has determined that for each year of the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Regina Erales has determined that for each year of the first five years the proposed amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be changing the commission’s rules to reflect statutory changes required by Senate Bill 937 and improved power restoration prior to the event of an extended outage. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these amendments. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

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

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission’s offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Thursday, August 16, 2012. The request for a public hearing must be received by the commission by Tuesday, August 14, 2012.

Comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by Monday, July 30, 2012. Reply comments may be submitted by Monday, August 13, 2012. Sixteen copies of comments to the proposed amendments 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 amended rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the amendments. The commission will consider the costs and benefits in deciding whether to adopt the amendments. All comments should refer to Project Number 40269.

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.001 (West 2007) (PUA), which gives the commission the general power to regulate and supervise the business of each public utility; §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §38.005, which requires the commission to implement service quality and reliability standards relating to the delivery of electricity to customers by electric utilities; and PURA §38.072, which requires an electric utility to give nursing facilities, assisted living facilities and hospice facilities the same priority that it gives to a hospital in the utility’s emergency operations plan for restoring power after an extended outage.


§25.52. Reliability and Continuity of Service.

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

(f) Priorities for Power Restoration to Certain Medical Facilities.

(1) A utility shall give the same priority that it gives to a hospital in the utility’s emergency operations plan for restoring power after an extended power outage, as defined by Texas Water Code, §13.1395, to the following:
(A) An assisted living facility, as defined by Texas Health and Safety Code, §247.002;

(B) A facility that provides hospice services, as defined by Texas Health and Safety Code, §142.001; and

(C) A nursing facility, as defined by Texas Health and Safety Code, §242.301;

(2) The utility may use its discretion to prioritize power restoration for a facility after an extended power outage in accordance with the facility's needs and with the characteristics of the geographic area in which power must be restored.

(g) System reliability. Reliability Standards shall apply to each utility, and shall be limited to the Texas jurisdiction. A "reporting year" is the 12-month period beginning January 1 and ending December 31 of each year.

(1) System-wide standards. The standards shall be unique to each utility based on the utility's performance, and may be adjusted by the commission if appropriate for weather or improvements in data acquisition systems. The standards will be the average of the utility's performance from the later of reporting years 1998, 1999, and 2000 or the first three reporting years the utility is in operation.

(A) SAIFI. Each utility shall maintain and operate its electric distribution system so that its SAIFI value shall not exceed its system-wide SAIFI standard by more than 5.0%.

(B) SAIDI. Each utility shall maintain and operate its electric distribution system so that its SAIDI value shall not exceed its system-wide SAIDI standard by more than 5.0%.

(2) Distribution feeder performance. The commission will evaluate the performance of distribution feeders with ten or more customers after each reporting year. Each utility shall maintain and operate its distribution system so that no distribution feeder with ten or more customers sustains a SAIDI or SAIFI value for a reporting year that is more than 300% greater than the system average of all feeders during any two consecutive reporting years.

(3) Enforcement. The commission may take appropriate enforcement action, including action against a utility, if the system and feeder performance is not operated and maintained in accordance with this subsection. In determining the appropriate enforcement action, the commission shall consider:

(A) the feeder's operation and maintenance history;

(B) the cause of each interruption in the feeder's service;

(C) any action taken by a utility to address the feeder's performance;

(D) the estimated cost and benefit of remediating a feeder's performance; and

(E) any other relevant factor as determined by the commission.

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

Filed with the Office of the Secretary of State on June 13, 2012.
TRD-201203073

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: July 29, 2012
For further information, please call: (512) 936-7223

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §26.402

The Public Utility Commission of Texas (commission) proposes new §26.402, relating to Transparency and Accountability in the Administration of the Texas Universal Service Fund, pursuant to Senate Bill 980 of the 82nd Texas Legislature, Regular Session in 2011 which in part amended Public Utility Regulatory Act (PURA) §56.023(d). The purpose of the new rule is to further ensure reasonable transparency and accountability in the administration of the Texas Universal Service Fund (TUSF). Project Number 39939 is assigned to this proceeding.

David Smithson, Retail Market Analyst, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rule.

Mr. Smithson has determined that for each year of the first five years the rule is in effect the primary public benefits anticipated as a result of enforcing the rule will be greater transparency and accountability in the administration of the TUSF. Mr. Smithson has determined that for each year of the first five years the rule is in effect the economic cost to persons required to comply with the rule will be limited to the production of annual reports to the commission regarding costs and revenues associated with services supported by the TUSF.

Mr. Smithson has also determined that for each year of the first five years the 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.

Mr. Smithson has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule. Therefore, no regulatory flexibility analysis is required.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 30 days of publication in the Texas Register. If requested, notice of a hearing will be posted under this project.

Initial comments on the amendment should 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, July 30, 2012. Reply comments should be submitted by Wednesday, August 8, 2012. Sixteen copies of comments 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 rule. All comments should refer to Project Number 39939.

The new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011), which provides authority to the commission to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §56.023(d), which requires the commission to adopt rules that include procedures to ensure reasonable transparency and accountability in the administration of the TUSF.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §56.023(d).


(a) Purpose. This section, in conjunction with the audit, eligibility, public reporting, and affidavits of compliance requirements set forth throughout this subchapter, establishes procedures to ensure reasonable transparency and accountability in the administration of the Texas Universal Service Fund (TUSF).

(b) Application. This section applies to a telecommunications provider that has been designated as an eligible telecommunications provider (ETP) by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)). Subsections (c)(3) and (d)(3) apply to a telecommunications provider that has been designated, or has applied after June 30, 2013 to be designated by the commission as an eligible telecommunications carrier (ETC) pursuant to §26.418 of this title (relating to Designation of Common Carrier as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds).

(c) Requirements for ETPs and ETCs that receive State or Federal High Cost Support and are Designated as Price Cap Carriers by the Federal Communications Commission. This subsection applies to an ETP or ETC that receives state or federal high cost support and has been designated by the Federal Communications Commission (FCC) as a price cap carrier.

(1) Reports required for a price cap carrier designated as an ETP that receives Texas USF high cost support. Beginning July 1, 2013, and upon that date in each successive year, each ETP receiving high cost disbursements from the TUSF pursuant to §26.403 of this title (relating to Texas High Cost Universal Service Plan (THCUSP)) or §26.404 of this title (relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan) that is a price cap carrier by FCC designation shall file with the commission a cost estimate for wire centers receiving TUSF support using the following data and methodology.

   (A) Operating expenses for the study area by category:

      (i) Plant-specific operations expense;
      (ii) Plant non-specific operations expense;
      (iii) Customer operations expense;
      (iv) Corporate operations expense;
      (v) Operating taxes; and
      (vi) Depreciation expense.

   (B) Develop a factor by dividing the total square miles of all supported wire centers by the total square miles of the study area.

   (C) Multiply the sum of the operating expenses from paragraph (2)(A) of this subsection by the factor calculated pursuant to paragraph (2)(B) of this subsection to produce an estimate of costs for the total of all supported wire centers.

(2) Reports required for a price cap carrier designated as an ETP and as an ETC that receives federal USF high cost support. This subsection applies to an ETP that has been designated as an ETP and as an ETC that receives federal high cost support and a price cap carrier by the Federal Communications Commission (FCC).

   (A) Beginning July 1, 2013, and upon that date in each successive year, each ETP receiving disbursements from the TUSF pursuant to §26.403 of this title or §26.404 of this title shall file confidentially with the commission a forward-looking cost estimate by wire center, using the formula shown below, in which the term "ln" means natural logarithm:

   Figure: 16 TAC §26.402(c)(2)(A)

   (B) By July 1, 2013, a telecommunications provider that has been designated as an ETC shall file a five-year plan that describes with specificity proposed improvements or upgrades to the ETC’s network throughout its service area or proposed service area. The information shall be submitted at the wire center level for a carrier receiving high cost support and on a census block level for a carrier receiving Mobility Fund support. The ETC shall estimate the area (expressed in square miles) and population that will be served as a result of the improvements for each wire center or census block as appropriate. An ETC that has been granted a limited ETC for purposes of providing Lifeline only, pursuant to 47 C.F.R. Part 54 Subpart E, is not required to submit a five-year plan. Any telecommunications provider that applies for ETC designation after June 30, 2013 shall submit a five-year plan with its ETC application.

   (C) By July 1st of each subsequent year after filing its five-year plan pursuant to subparagraph (B) of this paragraph, each ETC shall submit a progress report on its five-year plan, including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve service quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled in the prior calendar year. The information shall be submitted at the wire center level or census block as appropriate.

   (D) Requirements for ETPs and ETCs that receive state or federal high cost support and are designated as rate of return carriers, competitive local exchange carriers, or wireless carriers by the FCC. This subsection applies to an ETP or ETC that receives high cost support and has been designated by the FCC as a rate of return carrier, competitive local exchange carrier (CLEC), or wireless carrier.

   (1) Reports required for a rate of return carrier, competitive local exchange carrier (CLEC), or wireless carrier designated as an ETP that receives Texas USF high cost support.

   (A) Beginning July 1, 2013, and upon that date in each successive year, each ETP receiving disbursements from the TUSF pursuant to §26.403 or §26.404 of this title that is a rate of return carrier by FCC designation and has one or more wire centers not receiving TUSF support shall file with the commission a cost estimate for wire centers receiving TUSF support using the following data and methodology:

      (i) Operating expenses for the study area by category:

         (I) Plant-specific operations expense;
         (II) Plant non-specific operations expense;
         (III) Customer operations expense;
(IV) Corporate operations expense;
(V) Operating taxes; and
(VI) Depreciation expense.

(ii) Develop a factor by dividing the total square miles of all supported wire centers by the total square miles of the study area.

(iii) Multiply the sum of the operating expenses from paragraph (2)(A) of this subsection by the factor calculated pursuant to paragraph (2)(B) of this subsection to produce an estimate of costs for the total of all supported wire centers.

(B) For carriers in this category that receive TUSF support for all wire centers, provide operating expenses for the study area by category:

(i) Plant-specific operations expense;
(ii) Plant non-specific operations expense;
(iii) Customer operations expense;
(iv) Corporate operations expense;
(v) Operating taxes; and
(vi) Depreciation expense.

(2) Reports required for a rate of return carrier, competitive local exchange carrier (CLEC), or wireless carrier designated as an ETP and as an ETC that receives federal USF high cost support.

(A) By July 1, 2013, a telecommunications provider that has been designated as an ETC shall file a five-year plan that describes with specificity proposed improvements or upgrades to the ETC’s network throughout its service area or proposed service areas. The information shall be submitted at the wire center level for each carrier receiving high cost support and on a census block level for carriers receiving Mobility Fund support. The ETC shall estimate the area (expressed in square miles) and population that will be served as a result of the improvements for each wire center or census block as appropriate. An ETC that has been granted a limited ETC for purposes of providing Lifeline only, pursuant to 47 C.F.R. Part 54 Subpart E, is not required to submit a five-year plan. Any telecommunications provider that applies for ETC designation after June 30, 2013 shall submit a five-year plan with its ETC application.

(B) By July 1st of each subsequent year after filing its five-year plan pursuant to subparagraph (A) of this paragraph, each ETC shall submit a progress report on its five-year plan, including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve service quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled in the prior calendar year. The information shall be submitted at the wire center level or census block as appropriate.

(e) Reports made public by the commission. For each State fiscal quarter, no later than the 45th day after the end of the preceding quarter, the commission shall make the following information publicly available on the commission’s website:

1. A cash flow statement for the overall TUSF indicating starting balance, total revenues, disbursements for each program described in §26.401(b) of this title (relating to Texas Universal Service Plan (TUSF)), and ending balance;
2. Total deposits to the TUSF by each company; and
3. Total disbursements from the TUSF to each recipient company or organization for each program described in §26.401(b) of this title.

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

Filed with the Office of the Secretary of State on June 13, 2012.
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Adriana A. Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: July 29, 2012
For further information, please call: (512) 936-7223

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 80. LICENSED COURT INTERPRETERS

16 TAC §80.20, §80.80

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 80, §80.20 and §80.80, regarding the Licensed Court Interpreters program. These proposed rule changes are necessary to create a mandatory pre-test orientation course and establish fees for the upgrade to Master Designation license application.

The proposed rule changes were recommended by the Licensed Court Interpreter Advisory Board at its meeting on August 29, 2011 and discussed at the April 13, 2012 meeting. The Texas Commission of Licensing and Regulation (Commission) approved these rules for adoption at their meeting on May 29 and 30, 2012. Rule changes were originally proposed in the December 2, 2011, issue of the Texas Register (36 TexReg 8125); however, the proposed rules were withdrawn on June 2, 2012.

The proposal amends §80.20 by adding §80.20(b)(1), which establishes a mandatory pre-test orientation, and specifies that the orientation course requirement be a minimum of six hours in length. Section 80.20(d) is added to clarify that the orientation course applies to persons applying for a license on or after September 1, 2012. The proposed amendments to §80.20 regarding minimum orientation course time clarifies that the orientation course discussed in the rules as a “day-long” course be no less than six hours. Also, the addition of the September 1, 2012 date is added to give the Department sufficient time to review and approve orientation courses.

The proposal also amends §80.80 by establishing an upgrade to Master Designation application filing fee and an additional endorsement filing fee.

William H. Kuntz, Jr., Executive Director has determined that for the first five-year period the proposed rules are in effect there will be no foreseeable implications relating to cost or revenues of the state or local government as a result of enforcing or administering the proposed rules.
Mr. Kuntz has also determined that for each year of the first five-year period the amendments are in effect, the public will benefit because a mandatory orientation will provide interpreters with an overview of interpreter ethics, court terminology, and interpreting protocols which will increase the quality of services interpreters provide.

There will be an economic effect on small or micro-business or to persons who are required to comply with the rules as proposed under Texas Government Code, Chapter 2006. The proposed rule amendments to §80.20 will apply to persons who are not currently licensed. Department projections indicate that approximately 200 people per year will apply for a court interpreter license over the next five-year period based primarily upon the percentage increase in applications between 2007 and 2011.

The total anticipated economic effect on applicants who will be required to comply with §80.20(b)(1) will be the cost of the orientation course and any associated travel expenses. According to the Texas Association of Judiciary Interpreters and Translators (TAJIT), the projected costs for a full-day orientation course will be approximately $175 to $200 which will include food and lodging. While the requirement to attend an orientation session prior to licensing will have an economic impact on court interpreters, the requirement is necessary to ensure that court interpreters have the skills necessary to successfully navigate the role of the interpreter when they are faced with ethical dilemmas, legal terminology, and courtroom protocol.

Under Texas Government Code, Chapter 2006, the Department is required to consider alternative regulatory methods if they would be consistent with the health, safety, environmental and economic welfare of the state. An alternative would be to not require the course; however, this alternative is not viable because it does not meet the objectives of the rule. While the Department has determined that there is not an alternative method to achieving the purpose of the proposed rules, it has taken steps to minimize the adverse economic impact on court interpreter applicants by requiring that any orientation course be "department-approved" in order to ensure that the most effective and economical guidelines are established to meet the objectives of the proposed rules.

Comments on the proposal may be submitted by mail to Shanna Ducros, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to rule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed under Texas Occupations Code, Chapter 51, and Texas Government Code, Chapter 57, which authorizes the Department's governing body, the Commission, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51, and Texas Government Code, Chapter 57. No other statutes, articles, or codes are affected by the proposal.

§80.20. Licensing Requirements--General.

(a) Prior to performing court interpretation services, a person first must obtain a court interpreter license from the department with a language endorsement for each language that the applicant will interpret.

(b) A person seeking to be licensed as a court interpreter must:

(1) prior to filing an application with the department, satisfactorily complete a department-approved orientation course of at least six hours;

(2) [41] file an application with the department [Department] using department-approved [Department] forms;

(3) [42] pay a non-refundable license application filing fee;

(4) [43] satisfy the examination requirements of §80.22; and

(5) [44] complete all requirements, including satisfying the examination requirements within one year of the date of the application.

(c) Until September 1, 2013, the department [Department] shall consider examinations taken up to two years prior to the filing of the application for purposes of awarding a Basic Designation license.

(d) The orientation course requirement will apply to persons applying on or after September 1, 2012.

§80.80. Fees.

(a) All fees are non-refundable.

(b) The original license application filing fee shall be $75.

(c) The renewal application filing fee shall be $50.

(d) The upgrade to Master application filing fee shall be $25.

(e) The fee for obtaining an additional endorsement shall be $25.

(f) [41] The fee for obtaining a duplicate license is $25.

(g) [42] The fee for the written examination is $100.

(h) [43] The fee for each oral examination is $300.

(i) [44] Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal 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 June 18, 2012.

TRD-201203211

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Proposed date of adoption: September 1, 2012

For further information, please call: (512) 475-4879

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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 465. RULES OF PRACTICE

22 TAC §465.33

The Texas State Board of Examiners of Psychologists proposes an amendment to §465.33, Improper Sexual Conduct. The proposed amendment would prohibit harmful, or potentially harmful
relationships, between licensees and current or former patients, and between licensees and certain categories of third-persons when those relationships have the potential to harm patients.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendment will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Ms. Lee 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 help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700 or email brenda@tsbep.state.tx.us within 30 days of publication of this proposal in the Texas Register.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.33. Improper Sexual Conduct.

(a) "Sexual Harassment" includes solicitation, physical advances, or verbal or nonverbal conduct consisting of a single intense or severe act or of a multiple persistent or pervasive acts by a licensee toward another individual that are sexual in nature and occur in connection with licensee's professional activities and that are unwelcome, offensive, or create a hostile workplace environment for that individual.

(b) "Sexual Impropriety" is deliberate or repeated comments, gestures, or physical acts of a sexual nature that include, but are not limited to:

(1) Behavior, gestures, or expressions which may reasonably be interpreted as inappropriately seductive or sexually demeaning;

(2) Making inappropriate comments about an individual's body;

(3) Making sexually demeaning comments to an individual;

(4) Making comments about an individual's potential sexual performance, except when the examination or consultation is pertinent to the issue of sexual function or dysfunction in therapy/counseling;

(5) Requesting details of a patient or client's sexual history when not clinically indicated for the type of consultation;

(6) Requesting a date;

(7) Initiating conversation regarding the sexual problems, preferences, or fantasies of either party; or

(8) Kissing of a sexual nature.

(c) A sexual relationship is the engaging in any conduct that is sexual or may be reasonably interpreted as sexual in nature including, but not limited to:

(1) Sexual intercourse;

(2) Genital contact;

(3) Oral to genital contact;

(4) Genital to anal contact;

(5) Oral to anal contact;

(6) Touching breasts or genitals;

(7) Encouraging another to masturbate in one's presence;

(8) Masturbation in another's presence; or

(9) Exposure of sexual organs, breasts or buttocks.

(d) A dating relationship is a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature, but does not include a casual acquaintance or ordinary fraternization in a business or social context. The existence of such a relationship shall be determined based on consideration of:

(1) The length of the relationship;

(2) The nature of the relationship; and

(3) The frequency and type of interaction between the persons involved in the relationship.

(e) [465.33(d)] A licensee may not engage in sexual harassments, sexual improprieties, or a sexual relationship with a current patient or client; a former patient or client over whom the licensee has influence due to a therapeutic relationship; current students or trainees of the licensee; individuals who the licensee knows to be the parents, guardians, spouses, significant others, children, or siblings of current patients or a supervisee over whom the licensee has administrative or clinical responsibility. A licensee may not engage in a sexual relationship with individuals who the licensee knows to be the parents, guardians, spouses, significant others, children, or siblings of former patients for at least two years after termination of services.

(f) A licensee may not engage in a dating relationship with a current client or former client over whom the licensee has influence due to a therapeutic relationship, current students or trainees of the licensee; individuals who the licensee knows to be the parents, guardians, spouses, significant others, children, or siblings of current clients; or a supervisee over whom the licensee has administrative or clinical responsibility. A licensee may not engage in a dating relationship with individuals who the licensee knows to be the parents, guardians, spouses, significant others, children, or siblings of former clients, for at least two years after termination of services. A licensee may never engage in a dating relationship when there is potential for harm to any of these individuals.

(g) [465.33(e)] Psychologists do not accept as clients individuals with whom they have engaged in sexual relationships.

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

Filed with the Office of the Secretary of State on June 15, 2012.

TRD-201203103
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: July 29, 2012

For further information, please call: (512) 305-7700

22 TAC §465.38

PROPOSED RULES  June 29, 2012  37 TexReg 4781
The Texas State Board of Examiners of Psychologists proposes an amendment to §465.38, Psychological Services for Public Schools. The proposed amendment would ensure that there is no potential conflict between the newly proposed Board rule §463.31 and existing Board rules concerning use of titles during a practicum, internship, or other supervised experience.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendment will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Ms. Lee 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 help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700 or email brenda@tsbep.state.tx.us within 30 days of publication of this proposal in the Texas Register.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.38. Psychological Services for Public Schools.
This rule acknowledges the unique difference in the delivery of school psychological services in the public schools from psychological services in the private sector. The Board recognizes the purview of the State Board of Education and the Texas Education Agency in safeguarding the rights of public school children in Texas. The mandated multidisciplinary team decision making, hierarchy of supervision, regulatory provisions, and past traditions of school psychological service delivery both nationally and in Texas, among other factors, allow for rules of practice in the public schools which reflect these occupational distinctions from the private practice of psychology.

(1) Definition.

(A) The specialist in school psychology license permits the licensee to provide school psychological services in Texas public schools.

(B) A licensed specialist in school psychology (LSSP) means a person who is trained to address psychological and behavioral problems manifested in and associated with educational systems by utilizing psychological concepts and methods in programs or actions which attempt to improve the learning, adjustment and behavior of students. Such activities include, but are not limited to, addressing special education eligibility, conducting manifestation determinations, and assisting with the development and implementation of individual educational programs.

(C) The assessment of emotional or behavioral disturbance, for educational purposes, using psychological techniques and procedures is considered the practice of psychology.

(2) Titles. The correct title for persons holding this license is Licensed Specialist in School Psychology or LSSP. Only individuals who meet the requirements of Board rule §465.6 of this title (relating to Listings, Public Statements and Advertisements, Solicitations [Solicitation], and Specialty Titles) may refer to themselves as School Psychologists. No individual may use the title Licensed School Psychologist. An LSSP who has achieved certification as a Nationally Certified School Psychologist (NCSP) may use this credential along with the license title of LSSP.

(3) Providers of School Psychological Services. School psychological services may be provided in Texas public schools only by individuals authorized by this Board to provide such services. Individuals who may provide such school psychological services include LSSPs and interns or trainees as defined in Board rule §463.9 of this title (relating to Licensed Specialist in School Psychology) and persons seeking to fulfill the licensing requirements of Board rule §463.8 of this title (relating to Licensed Psychological Associate), Board rule §463.10 of this title (relating to Provisionally Licensed Psychologists), and Board rule §463.11 of this title (relating to Licensed Psychologist). Nothing in this rule prohibits public schools from contracting with licensed psychologists and licensed psychological associates who are not LSSPs to provide psychological services, other than school psychology, in their areas of competency. School districts may contract for specific types of psychological services, such as clinical psychology, counseling psychology, neuropsychology, and family therapy, which are not readily available from the licensed specialist in school psychology employed by the school district. Such contracting must be on a short term or part time basis and cannot involve the broad range of school psychological services listed in paragraph (1)(B) of this section. An LSSP who contracts with a school district to provide school psychological services may not permit an individual who does not hold a valid LSSP license to perform any of the contracted school psychological services.

(4) Supervision.

(A) Direct, systematic, face-to-face supervision must be provided to:

(i) Interns as defined in Board rule §463.9 of this title.

(ii) Individuals who meet the training requirements of Board rule §463.9 of this title and who have passed the National School Psychology Examination at the Texas cutoff score or above and who have been notified in writing of this status by the Board. These individuals may practice under supervision in a Texas public school district for no more than one calendar year. They must be designated as trainees.

(iii) LSSPs for a period of one academic year following licensure unless the individual also holds licensure as a psychologist in Texas. This supervision may be waived for individuals who legally provided full-time, unsupervised school psychological services in another state for a minimum of three academic years immediately preceding application for licensure in Texas as documented by the public schools where services were provided and who graduated from a training program approved by NASP or accredited in school psychology by APA or who hold NCSP certification.

(iv) LSSPs when the individual is providing psychological services outside his or her area of training and supervised experience.

(B) Nothing in this rule applies to administrative supervision of psychology personnel within Texas public schools, performed by non-psychologists, in job functions involving, but not limited to, attendance, time management, completion of assignments, or adherence to school policies and procedures.

(5) Supervisor Qualifications. Supervision may only be provided by a LSSP, who has a minimum of three years of experience
providing psychological services in the public schools of this or another state. To meet supervisor qualifications, a licensee must be able to document the required experience by providing documentation from the authority that regulates the provision of psychological services in the public schools of that state and proof that the licensee provided such services, documented by the public schools in the state in which the services were provided. Any licensed specialist in school psychology may count one full year as an intern or trainee as one of the three years of experience required to perform supervision.

(6) Conflict Between Laws and Board Rules. In the event of a conflict between state or federal statutes and Board rules, state or federal statutes control.

(7) Compliance with Applicable Education Laws. LSSPs shall comply with all applicable state and federal laws affecting the practice of school psychology, including, but not limited to:

(A) Texas Education Code;

(B) Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232q;

(C) Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq;

(D) Texas Public Information Act ("Open Records Act"), Texas Government Code, Chapter 552;


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

Filed with the Office of the Secretary of State on June 15, 2012.

TRD-201203104

Sherry L. Lee
Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: July 29, 2012

For further information, please call: (512) 305-7700

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER X. PREFERRED AND EXCLUSIVE PROVIDER PLANS

The Texas Department of Insurance proposes amendments to 28 TAC Chapter 3, Subchapter X, Preferred Provider Plans, §§3.3701 - 3.3710, concerning the regulation of preferred provider benefit plans, and new §§3.3720 - 3.3725, concerning the regulation of exclusive provider benefit plans. The proposed amendments include the addition of two new divisions. The first new division includes current §§3.3701 - 3.3711 and 3.3713, and the second new division includes new §§3.3720 - 3.3725. The proposed amendments and new sections are necessary to implement those portions of House Bill (HB) 1772, enacted by the 82nd Legislature, Regular Session, effective September 1, 2011, that amend the Insurance Code Chapter 1301 to allow insurers to offer exclusive provider benefit plans in the commercial insurance market in Texas.

Amendments to Subchapter X are necessary to implement HB 1772 and to conform existing provisions of Subchapter X with HB 1772. The intent of HB 1772 is to provide health insurers offering health plan coverage in Texas with additional options to offer lower cost health plans to employers and individual consumers by permitting plans with closed networks where, as with health maintenance organizations (HMOs), "only services provided by network providers are covered, with the exception of emergency services and out of network services provided when no network provider is available." HOUSE COMM. ON INSURANCE, BILL ANALYSIS, HB 1772, 82nd Legislature, Regular Session (2011).

The amended and new sections are proposed under and intended to implement: the Insurance Code §1301.003, which permits exclusive benefit plans that meet the requirements of the Insurance Code Chapter 1201; the Insurance Code §1301.007, which authorizes the commissioner to adopt rules to implement Chapter 1301; and the Insurance Code §1301.0042, which says that a provider of the Insurance Code or other insurance law that applies to a preferred provider benefit plan also applies to an exclusive provider benefit plan unless the provision is determined to be inconsistent with the function and purpose of an exclusive provider benefit plan. In addition to this extension of applicability of current insurance law, the HB 1772 amendments to Chapter 1301 require an insurer that offers an exclusive provider benefit plan to establish quality improvement and utilization management procedures to ensure that health care services are provided to insureds under reasonable standards of quality of care, practice, and price. The amendments made by the bill also require that the department conduct qualifying and ongoing examinations of the plan. Additionally, the bill establishes requirements for: emergency care services, referrals to nonpreferred providers when medically necessary covered services are not available through a preferred provider, network adequacy, and information that must be provided to prospective and current insureds.

Amendments to Subchapter X revise the subchapter's heading to be "Preferred and Exclusive Provider Plans" and divide the subchapter into two new divisions. New Division 1, relating to General Requirements, addresses general requirements that are applicable to both preferred provider benefit plans and exclusive provider benefit plans, unless otherwise indicated. New Division 1 encompasses the sections that are currently contained in Subchapter X, §§3.3701 - 3.3711 and 3.3713.

No amendments are currently proposed to existing §§3.3711 or 3.3713, although the department anticipates considering the possible repeal of §3.3713 in future rulemaking efforts. Amendments to §§3.3701 - 3.3710 revise them as necessary to address exclusive provider benefit plans and align regulation of the two types of plans. New Division 2, relating to Exclusive Provider Benefit Plan Requirements, addresses requirements...
that are applicable only to exclusive provider benefit plans, and consists of new §§3.3720 - 3.3725.

Amendments throughout new Division 1 revise capitalization in catchlines, replace the phrase "is required to" with the word "must," and remove or revise the word "such" where necessary for consistency with department rule drafting style. Amendments also change the word "subchapter" to "title" where necessary for consistency with department style for references to other sections within rule text. Additionally, amendments throughout new Division 1 make nonsubstantive revisions to correct punctuation errors in the current rule text.

Amendments to §3.3701 provide effective dates for the rules to preferred provider benefit plans and exclusive provider benefit plans and also address applicability of rules in Title 28 to exclusive provider plans. These provisions are necessary to provide sufficient notice to insurers of the applicability and effective dates of amended and new regulations under the subchapter, to clarify certain limitations on the scope of the amended subchapter, and to ensure conformity with amendments throughout the Insurance Code Chapter 1301 as provided by HB 1772.

Amendments to §3.3701(a) provide that the subchapter applies to any preferred or exclusive provider benefit plan that is offered, delivered, or issued for delivery on or after 120 days from the effective date of §3.3701. This effective date is intended to supersede Commissioner's Bulletin #B-0050-11, in which the department suspended its enforcement of amendments to the preferred provider benefit plan rules that were to become effective May 19, 2012. The amendments also provide that the subchapter does not apply to exclusive provider benefit plans providing services for Texas Children's Health Insurance Program, Medicaid, or the Statewide Rural Health Care System.

New §3.3701(f) provides that provisions in Title 28 applicable to preferred provider benefit plans are also applicable to exclusive provider benefit plans unless specified otherwise.

Amendments to §3.3702 incorporate definitions for terms defined in the Insurance Code Chapter 1301, add necessary definitions for additional terms used in the subchapter, redesignate paragraphs as necessary for inclusion of the new definitions, and remove terms that are defined solely by references to the Insurance Code Chapter 1301. The amendments to §3.3702 are necessary to ensure consistent usage of terminology referenced throughout Subchapter X. The amendments add subsections (a) and (b) to the section and incorporate the terms currently defined in the section into subsection (b).

Proposed §3.3702(a) provides that words and terms defined in the Insurance Code Chapter 1301 have the same meaning when used in Subchapter X. Amendments to §3.3702(b) add the following defined terms: "adverse determination," "allowed amount," "complaintant," "complaint," "exclusive provider network," "in-network," and "out-of-network." Additionally, the proposal amends the definition of "urgent care."

Section 3.3702(b) removes the following defined terms, which are unnecessary due to the addition of proposed §3.3702(a): "emergency care," "health insurance policy," "institutional provider," "insurer," "physician," "practitioner," "preferred provider," "preferred provider benefit plan," "prospective insured," "quality assessment," and "service area."

Amendments to §3.3703 clarify language and address the current standards and requirements for contracting, enforcement of contracting standards and rights, and delegation of contracting to exclusive provider benefit plans, exclusive provider organizations, and health care collaboratives.

An amendment to §3.3703(a)(1) updates the reference to preferred provider organizations to include networks or organizations and inserts a reference to exclusive provider benefit plans, exclusive provider networks or organizations, and health care collaboratives. An amendment to §3.3703(a)(11) removes a reference to the Insurance Code Chapter 1301, Subchapter C, and 28 TAC §§21.2801 - 21.2820 because it is unnecessary; the subchapter and sections are applicable without specific citation to them in §3.3703. An amendment adds §3.3703(a)(27) to clarify that the subsection does not prohibit other contractual requirements permitted by law.

The amendment to §3.3703(b)(26) clarifies the language without making a substantive change.

The amendment to §3.3703(c) clarifies that delegation requirements apply to exclusive provider networks and health care collaboratives. The amendment also provides that an insurer may not delegate its responsibility to provide to the department upon request all documentation necessary to demonstrate compliance with applicable rules. It is necessary that an insurer remain responsible for compliance with these standards and requirements, even if the insurer delegates them to an exclusive provider benefit plan, an exclusive provider organization, an exclusive provider network, or a health care collaborative, to ensure that all medical and health care services and items contained in the package of benefits for which coverage is provided, including treatment of illnesses and injuries, will be provided under the new plans in a manner that assures both availability and accessibility of adequate personnel, specialty care, and facilities.

Amendments to §3.3704 add clarifying language and provide consistency with department style for rules.

Amendments to §3.3704(a) remove several unnecessary section symbols. Amendments to §3.3704(a)(1), (6), (8), (10), and (11) exempt exclusive provider benefit plans from the general application of fairness requirements specified in the paragraphs to the extent necessary to conform with the statutorily permitted structure of exclusive provider benefit plans, which are only required to provide benefits for the services of nonpreferred providers in limited circumstances. An amendment to §3.3704(a)(5) clarifies that the right of the insured to emergency care services includes providing payment for the services in accordance with the Insurance Code Chapter 1301.0053, and also §3.3725 and §3.3708. An amendment to §3.3704(a)(7) applies the right of insureds to exercise full freedom of choice in the selection of preferred providers under exclusive provider benefit plans. The amendment to §3.3704(a)(12) incorporates the existing right of insureds to receive nonpreferred provider care for medically necessary covered services that are not available through a preferred physician or provider.

The amendment to §3.3704(b) clarifies that only covered services of nonpreferred providers must be paid in the same prompt and efficient manner as are preferred providers.

Amendments to §3.3705 update or clarify language throughout the section. These amendments are necessary to ensure conformity with amendments throughout the Insurance Code Chapter 1301 as provided by HB 1772.

An amendment to §3.3705(b) clarifies that required written descriptions of requirements are to be included as applicable.
An amendment to §3.3705(b)(1) imposes a requirement to disclose to current or prospective group contract holders or insureds that, in the case of an exclusive provider benefit plan, the contract only provides benefits for services received from preferred providers, except as otherwise noted. An amendment to §3.3705(b)(9) clarifies that the disclosure requirements for prior authorizations encompass any authorization requirements, regardless of when the authorization process is initiated. An amendment to §3.3705(b)(12) modifies the electronic disclosure requirements of provider listings to allow for electronic disclosure when notice regarding how to obtain a nonelectronic copy is provided with the electronic disclosure. An amendment to §3.3705(b)(14) simplifies reporting requirements by eliminating requirements that, based on stakeholder input, the department has determined to be likely to increase premiums without providing a sufficiently substantial benefit to consumers and clarifies reporting to consumers of the existence of access plans.

An amendment to §3.3705(c) updates the email address and mailing address that insurers should use when submitting provider listings under §3.3705(b)(12). An amendment to §3.3705(d) exempts exclusive provider benefit plans from the illustration proximity requirements of the subsection since exclusive provider benefit plans are not required to contain basic benefits.

An amendment to §3.3705(f) updates the reference to the figure currently in the subsection to be Figure: 28 TAC §3.3705(f)(1) and updates the reference to the department’s website within the figure. Additionally, the amendment to §3.3705(f) adds a second figure, Figure: 28 TAC §3.3705(f)(2), which provides information equivalent to that in Figure: 28 TAC §3.3705(f)(1), but in regard to exclusive provider benefit plans.

An amendment to §3.3705(k) updates the subsection to address both preferred and exclusive provider benefit plan requirements.

Amendments to §3.3705(l) modify the additional listing-specific disclosure requirements by removing provisions that, based on stakeholder input, the department has determined do not provide substantial benefit to consumers and may lead to increased premiums. Another amendment to §3.3705(l) revises a reference to required font point size to provide consistency in how font point is addressed in the sections.

The amendments to §3.3705(o), which the department proposes to redesignate as §3.3705(n), modify disclosures concerning reimbursement of out-of-network services to update language and to exempt exclusive provider benefit plans from required notification provisions as necessary to conform with amendments to Chapter 1301.

Finally, amendments to §3.3705 also delete the current §3.3705(n), along with §3.3705(p) and (q), to remove unnecessary requirements for disclosure of substantial decreases in the availability of certain preferred providers, plan designations, and loss of status as an approved hospital care network. Based on stakeholder input, the department has determined that the provisions do not provide substantial benefit to consumers and may lead to increased premiums.

Amendments to §3.3706 correct an error and make changes for consistency with department style.

An amendment to §3.3706(b)(2)(B) replaces an erroneous reference to "insured" with a reference to "insurer.”

An amendment to §3.3706(c) changes "shall" to "will" and an amendment to §3.3706(h) changes "shall" to "must" for consistency with TDI rule drafting style. Additional amendments to §3.3706(c) revise the subsection to clarify that "NCQA" stands for "National Committee for Quality Assurance' and to remove a reference to the American Accreditation HealthCare Commission, "American Accreditation HealthCare Commission, Inc." is an alternative name occasionally used by URAC. Because the subsection references URAC, it is not necessary to also list the alternative name occasionally used by URAC.

Amendments to §3.3707 update statutory references, clarify language regarding the application process for a waiver from one or more of the network adequacy requirements, and exempt exclusive provider benefit plans from the application of the section.

The amendment to §3.3707(b) clarifies that an insurer is not required to disclose information to providers that would violate state or federal law.

The amendment to §3.3707(e) provides clear application and renewal deadlines to allow simpler administration of the waiver process. The amendment provides that a waiver the department has granted will remain in effect unless the insurer fails to timely file an annual application for renewal of the waiver or the department denies the application for renewal.

The amendment to §3.3707(f) provides that a waiver will expire one year after the date the department granted it if an insurer fails to timely request a renewal under subsection (e) of the section or if the department denies the insurer's request for renewal.

New §3.3707(g) provides that exclusive provider benefit plans may not obtain a waiver due to failure to contract in local markets. The department has made a determination that the provision of the Insurance Code §1301.0055 permitting a waiver of network adequacy standards is inconsistent with the function and purpose of an exclusive provider benefit plan. Since exclusive provider benefit plans have no out-of-network benefits, permitting a waiver would effectively eliminate coverage for enrollees. Instead, exclusive provider benefit plans will be required to adopt access plans when they do not meet network adequacy standards or limit their service areas, as is the case with HMOs.

Amendments to §3.3708 add clarification to the section and also address inapplicability of the section to exclusive provider plans.

The amendments to §3.3708(b) clarify that, when an insured receives services from a nonpreferred provider because no preferred provider is reasonably available and the insured actually pays a balance bill to the nonpreferred provider, the insurer must credit the full amount paid by the insured to the insured's deductible and annual out-of-pocket maximum applicable to in-network services.

The amendments to §3.3708(e) exempt exclusive provider benefit plans from application of the section because those insured under exclusive provider benefit plans have other protections against balance billing. The amendments also remove an unnecessary notice requirement regarding the right to request information concerning negotiated rates for comparison purposes. Amendments to §3.3708(e) are necessary to ensure conformity with amendments throughout the Insurance Code Chapter 1301, as provided by HB 1772, and to remove an unnecessary notice provision that, based on stakeholder input, the department has determined will be likely to increase premiums without providing a substantial benefit to consumers.

Amendments to §3.3709 update references to benefit claims to address out-of-network claims, add a reference to a proposed new section, and exempt exclusive provider benefit plans from

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a notification requirement inapplicable to the plans. The amendments also delete an unnecessary catch-all provision and redesignate the subparagraphs in a subsection.

The amendments to §3.3709(c) revise references to claims for benefits in paragraphs (1) and (2) to reference claims for out-of-network benefits. The amendments to §3.3709(e) revise a reference to benefit claims to reference out-of-network benefit claims. The amendments also delete an unnecessary catch-all provision in current paragraph (2) of the section. The catch-all provision provides that the department may request additional information necessary to assess the local market access plan. However, the provision does not state what additional information the department may request, and the other rules and statutes already provide the department sufficient authority to access information necessary to assess a local market access plan. Removal of paragraph (2) necessitates that the department incorporate paragraph (1) into subsection (e), and redesignate the subparagraphs under paragraph (1) to accurately reflect this. Additionally, an amendment to redesignated §3.3709(e)(5) inserts a necessary reference to new §3.3725 (relating to Payment of Certain Out-of-Network Claims).

An amendment to §3.3709(f)(1)(C) exempts exclusive provider benefit plans from the requirement to notify an insured that the insured may be liable for any amounts charged by a physician or provider when charges are not paid in full by the insurer due to other protections afforded insureds in exclusive provider benefit plans. An amendment to §3.3709(f)(2)(B) clarifies that when an insurer utilizes a documented procedure to make initial or subsequent payment of claims, the insurer must do so in the manner required by Subchapter X.

An amendment to §3.3709(h) updates the email address to which an insurer must submit the annual report required under §3.3709.

Amendments to §3.3710 address applicability to exclusive provider networks and update a statutory citation. The amendments revise §3.3710(a) to remove the description "preferred provider service delivery" to encompass applicability to exclusive provider networks and update a statutory reference concerning cease and desist orders to include the Insurance Code Chapter 82.

New Division 2, relating to Exclusive Provider Benefit Plan Requirements, addresses requirements that are applicable only to exclusive provider benefit plans.

New §3.3720 addresses applicability of the division; it is only applicable to exclusive provider benefit plans.

New §3.3721 provides that an insurer may not offer, deliver, or issue for delivery an exclusive provider benefit plan prior to obtaining commissioner approval of the insurer's exclusive provider network for each service area where the plan will be offered. This requirement is necessary to ensure that an insurer has met network adequacy requirements prior to offering, delivering, or issuing for delivery an exclusive provider benefit plan in accordance with the Insurance Code §1301.0056(a), which provides that an insurer is subject to a qualifying examination of the insurer's exclusive provider benefit plan.

New §3.3722 sets forth filing requirements and specifies the content of the initial application for approval of an exclusive provider benefit plan. These requirements and procedures are necessary to ensure compliance with network adequacy requirements.

New §3.3722(a) requires an insurer that seeks to offer an exclusive provider benefit plan to file an application for approval with the department. It also provides the web address for a form that an insurer may use to prepare the application.

New §3.3722(b) sets forth general filing requirements, including legibility requirements and copy requirements for the original application packet and for any revisions or supplements to the application packet.

New §3.3722(c) includes twelve elements that must be included with an application for certificate of compliance. These elements are: (i) a statement regarding whether the filing is for an original or modified certificate of compliance; (ii) the name and contact information for the insurer; (iii) the name and contact information of an individual point of contact regarding the application; (iv) an attestation regarding the accuracy and completeness of the application and stating that the network is adequate for the services to be provided under the exclusive provider benefit plan; (v) a description and map of the service area; (vi) a list of all plan documents and each document's associated form filing ID number or form number; (vii) the forms for physician and provider contracts required by the regulations; (viii) an application for approval, or a modification to the application, listing all documents required by the regulations; (ix) a description of the quality improvement program; (x) network configuration information; (xi) documentation that demonstrates the insurer's intent to provide emergency care services; (xii) documentation that the insurer maintains a reasonable complaint system; and (xiii) notification of the physical address of all books and records required under subsection (d) of the section.

New §3.3722(d) includes requirements that apply during a qualifying examination. These requirements are: insurers must make available for review by the department documents relating to quality improvement; utilization management; network configuration, including executed contracts; credentialing files; written materials for prospective insureds that contain information about the network and how preferred and nonpreferred providers will be reimbursed under the plan; the policy and certificate of insurance; and the complaint log.

New §3.3722(e) addresses approval and notification requirements for any changes implemented by an insurer after the department has granted approval of a certificate of compliance. New §3.3722(e)(1) requires an insurer to file an application for approval with the department prior to making changes to network configuration that impact the adequacy of the network, expand or reduce an existing service area, or add a new service area. New §3.3722(e)(2) requires an insurer to file with the department changes in maps of service areas, forms of contracts, or network configuration information. New §3.3722(e)(3) provides that, before the department grants approval of a service area expansion or reduction application, an insurer must be in compliance with the requirements of §3.3724 in existing and proposed service areas. New §3.3722(e)(4) requires that an insurer file with the department any information other than the information described in §3.3722(e)(2) that amends, supplements, or replaces the items required under subsection §3.3722(c) no later than 30 days after the implementation of any change.

New §3.3723 provides standards and requirements for examinations relating to exclusive provider benefit plans conducted by the department. These requirements are necessary to ensure continued compliance with network adequacy standards. New §3.3723(a) states that the commissioner may conduct an exam-
New §3.3723(b) requires financial, market conduct, complaint, or quality of care exams to be conducted pursuant to the Insurance Code Chapter 401, Subchapter B, relating to the examination of carriers; the Insurance Code Chapter 751, relating to market conduct surveillance; and 28 TAC §7.83, relating to appeal of examination reports.

New §3.3723(c) requires an insurer to make books and records relating to its operations available to the department to facilitate an examination.

New §3.3723(d) requires an insurer to provide to the commissioner upon request a copy of any contract, agreement, or other arrangement between the insurer and a physician or provider.

New §3.3723(e) allows the commissioner to examine and use the records of an insurer, including records of a quality care program and records of a medical peer review committee, for examination and enforcement purposes.

New §3.3723(f) requires the insurer to make available for review by the department documents relating to quality improvement, utilization management, complaints, satisfaction surveys, network configuration information, credentialing files, and reports.

New §3.3724 establishes minimum standards and requirements for a quality improvement program for commercial exclusive provider benefit plans in accordance with Insurance Code §1301.0051. The section is necessary to ensure availability, accessibility, quality, and continuity of care for insureds.

New §3.3724(a) requires an insurer to develop and maintain an ongoing quality improvement program designed to evaluate the quality and appropriateness of care and services and to pursue opportunities for improvement. New §3.3724(a)(1) - (5) prescribes minimum standards for the quality improvement program and provides that the program must include specified standards. The standards are that the insurer: (i) include a written description of the quality improvement program that outlines program organizational structure, functional responsibilities, and meeting frequency; (ii) include an annual quality improvement work plan that includes program areas as specified in the section and that is designed to reflect the type of services and the population served by the exclusive provider benefit plan in terms of age groups, disease categories, and special risk status; (iii) include an annual written report on the quality improvement program; (iv) implement a documented process for selection and retention of contracted preferred providers that complies with the credentialing requirements set forth in §3.3706(c); and (v) provide for a peer review procedure for physicians and individual providers.

New §3.3724(b) requires the insurer's governing body to appoint a quality improvement committee, approve the quality improvement program, approve an annual quality improvement plan, meet at least once a year to review reports of the quality improvement committee, and review the annual written report on the quality improvement program.

New §3.3724(c) requires the quality improvement committee to evaluate the overall effectiveness of the quality improvement program and sets forth delegation, collaboration, and multidisciplinary team requirements.

New §3.3724(d) provides that when reviewing an insurer's quality improvement program, the department will presume that the insurer is in compliance with statutory and regulatory requirements regarding the insurer's quality improvement program if the insurer has received nonconditional accreditation or certification specific to quality improvement by the National Committee for Quality Assurance, the Joint Commission, URAC, or the Accreditation Association for Ambulatory Health Care. However, new §3.3724(d) also provides that if the department determines that an accreditation or certification program does not adequately address a material Texas statutory or regulatory requirement, the department will not presume the insurer to be in compliance with that requirement.

New §3.3725 provides minimum standards for emergency care services and services provided out-of-network when no preferred provider is available, claim payments, reimbursement rates, and reimbursement methodologies. New §3.3725 is necessary to ensure an adequate process for insureds to obtain out-of-network services when necessary and to ensure an adequate claims payment and reimbursement process.

New §3.3725(a) requires an insurer to fully reimburse a nonpreferred provider for emergency care services specified in the subsection at the usual and customary rate or at a rate agreed to by the insurer and the nonpreferred provider for emergency care services when an insured cannot reasonably reach a preferred provider, until the insured can reasonably be expected to transfer to a preferred provider.

New §3.3725(b) requires an insurer to, upon request of a preferred provider, timely approve a referral to a nonpreferred provider for medically necessary covered services when the services are not available through a preferred provider and to provide a review by a health care provider with similar expertise as the provider to whom a referral is requested prior to denying a requested referral.

The language of §3.3725 differs from §3.3708, the section that addresses similar requirements applicable to preferred provider benefit plans, in that the department has not incorporated requirements in §3.3708(b) relating to payments of out-of-network providers when no preferred provider is reasonably available. The department determined that the language in §3.3708(b) is unnecessary given the statutory requirements in the Insurance Code §§1301.0052, 1301.0053, and 1301.155. The Insurance Code §1301.0052 requires an issuer of a preferred provider plan to fully reimburse a nonpreferred provider at the usual and customary rate or at a rate agreed to by the issuer and the nonpreferred provider for covered medically necessary services not available through a preferred provider. The Insurance Code §1301.0053 requires an issuer of a preferred provider plan to reimburse a nonpreferred provider at the usual and customary rate or at a rate agreed to by the issuer and the nonpreferred provider for the provision of emergency care services. The Insurance Code §1301.155 requires an insurer of a preferred provider plan to provide reimbursement for specified emergency care services at the preferred level of benefits until the insured can reasonably be expected to transfer to a preferred provider. The department is interested in receiving comments on this approach and whether the department should include in §3.3725 a clarification similar to that found in §3.3708(b).

New §3.3725(c) addresses insurer facilitation of an insured's selection of a nonpreferred provider when medically necessary covered services, excluding emergency care, are not available through a preferred provider. Section 3.3725(c) provides that if an insurer chooses to facilitate an insured's selection of a nonpreferred provider pursuant to the subsection, the insurer must
offer an insured a list of at least three nonpreferred providers with expertise in the necessary specialty who are reasonably available considering the medical condition and location of the insured. If the insured selects a nonpreferred provider from the list provided by the insurer, §3.3725(d) - (f) are applicable. If the insured selects a nonpreferred provider that is not included in the list provided by the insurer, then §3.3725(d) - (f) are applicable and, notwithstanding §3.3708(e), the insurer must pay the claim in accordance with §3.3708.

New §3.3725(d) provides that an insurer reimbursing a nonpreferred provider under §3.3725(a), (b), or (c)(2) must ensure that the insured is held harmless for any amounts beyond the copayment, deductible, and coinsurance percentage that the insured would have paid had the insured received services from a preferred provider.

New §3.3725(e) sets the process for an insurer to follow when determining that a claim from a nonpreferred provider under subsection (a), (b), or (c)(2) is payable. It specifies that the insurer issue payment to the nonpreferred provider at the usual and customary rate or a rate agreed to by the insurer and the nonpreferred provider. The insurer must also provide an explanation of benefits to the insured along with a request that the insured notify the insurer if the nonpreferred provider bills the insured for amounts beyond the amount paid by the insurer. The section requires that the insurer resolve any amounts that the nonpreferred provider bills the insured beyond the amount paid by the insurer in a manner consistent with §3.3725(d). New §3.3725(e) also permits the insurer to require in its contract with an insured that, if a claim is eligible for mediation under the Insurance Code Chapter 1467 and 28 TAC Chapter 21, Subchapter PP (relating to Out-of-Network Claim Dispute Resolution), the insured must pursue mediation. The section requires that the insurer notify the insured when mediation is available, specifies what amount should be taken into consideration in determining when mediation is available, and provides that if the amount of a claim is changed as a result of mediation required by the insurer, the insurer’s payment must be based on the amount that results from the mediation process.

New §3.3725(f) provides methodology standards for insurer calculation of reimbursements.

On February 7, 2012, the department posted a call for comments from the public on the substance of an informal draft rule and on the costs of implementing the rule. In addition to receiving written comments on the informal draft, the department held a stakeholder meeting on February 23, 2012, to discuss the rule and the potential costs of implementation. The department appreciates all comments received and discussions held during the drafting process.

FISCAL NOTE. Doug Danzeiser, manager, Regulatory Matters, has determined that for each year of the first five years the proposal will be in effect, there will be no measurable fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Danzeiser also has determined that for each year of the first five years the proposed amendments and new sections are in effect, there are several public benefits anticipated as a result of the enforcement and administration of this proposal, as well as potential costs of compliance for insurers with preferred provider benefit plans or insurers choosing to enter the exclusive provider benefit plan market. The department has drafted the proposed rules to maximize public benefits consistent with the authorizing statutes while mitigating costs. The anticipated public benefits are: (i) implementation of rules necessary to comply with HB 1772; (ii) establishment of regulatory standards for the new exclusive provider benefit plan, including standards for certification, contracting, network adequacy, preferred provider designation, and claims payment; (iii) establishment of transparency of information for consumers utilizing exclusive provider benefit plans, through required notices, preferred provider directory requirements, complaint resolution requirements, and quality improvement program requirements; and (iv) efficient regulation and operation of preferred and exclusive provider benefit plans in Texas.

On February 7, 2012, the department posted a call for comments on its website that included a request for comments regarding the costs of implementing the proposed rule. As a result, the department received general input on the cost of compliance, but did not receive specific cost estimates. The department has modified the rule text in a number of ways to minimize potential cost and has developed estimated costs for compliance with the proposed rules based on cost components previously used by the department for similar compliance requirements. Individual insurers that identify, based on their own operations, differing costs for those cost components will be able to calculate their particular costs using the department’s cost analysis approach.

The department has identified eight categories of labor reasonably necessary to implement the proposed changes to the subchapter. Insurers may calculate the total cost of labor for each category by multiplying the number of estimated hours for each cost component by the median hourly wage for each category of labor. The median hourly wage for each category of labor is published online by the Texas Workforce Commission as follows:

(i) a general operations manager or functional director: $58.64
   (www.texasindustryprofiles.com/apps/win/eds.php?geocode=4801000048&indclass=8&indcode=5241&occcode=11-1021&compare=2);
(ii) a computer programmer: $38.60
   (www.texasindustryprofiles.com/apps/win/eds.php?indcode=5241&indclass=8);
(iii) an administrative assistant: $21.69
   (www.texasindustryprofiles.com/apps/win/eds.php?geocode=4801000048&indclass=8&indcode=43-6011&compare=2);
(iv) a staff attorney: $51.56
   (www.texasindustryprofiles.com/apps/win/eds.php?geocode=4801000048&indclass=8&indcode=23-1011&compare=2);
(v) a medical director: $105.65
   (www.texasindustryprofiles.com/apps/win/eds.php?geocode=4801000048&indclass=8&indcode=6221&occcode=11-1011&compare=2);
(vi) a registered nurse: $31.87
   (www.texasindustryprofiles.com/apps/win/eds.php?geocode=4801000048&indclass=8&indcode=6221&occcode=29-1111&compare=2);
is of estimate chapter 2011 compare=2). (www.texasindustryprofiles.com/apps/eds.php?indcode=52&indclass=6); and

(viii) a paragel: $26.69


The department estimates that an insurer's overall printing, copying, mailing, and transmitting costs will likely be impacted as a result of implementation of the new subchapter. According to the United States Postal Service business price calculator, available at dbecalc.usps.gov, the cost to mail machinable letters in a standard business mail envelope with a weight limit of 3.3 ounces to a standard five-digit ZIP code in the United States is 26 cents. With the weight limit of 3.3 ounces, approximately 18 pages could be sent per envelope for the 26 cents. This estimate is based on an anticipated use of six pages of standard printing paper, with a total weight of one ounce. The department has determined that the cost of a standard business envelope is 1.6 cents. The department further estimates that the cost of printing or copying is between 6 and 8 cents per page.

It is not feasible for the department to estimate the total amount of increased printing, copying, mailing, and transmitting costs attributable to compliance with the proposed changes to the subchapter because there are numerous factors involved that are not suited to reliable quantification by the department, including factors like the size of the insurer's service area, the number of insureds enrolled in the plan, the number of contracted physicians and providers, and the number of complaints generated annually. The department estimates that each insurer has the information necessary to determine its individual printing, copying, mailing, and transmitting costs necessary to meet the requirements of the subchapter, and the department has identified factors throughout the sections that may contribute to an increased cost for printing, copying, mailing, and transmitting where applicable.

The department has determined that the actual cost of implementation could be significantly lower than estimated because insurers sometimes contract with independent provider networks (networks) in order to meet network adequacy requirements. An arrangement like this is likely to occur in the context of exclusive provider plans. Specifically, insurers could contract with one or more networks that would assume primary responsibility for undertaking one or more of the steps necessary to comply with §§3.3703 - 3.3706, 3.3709, and 3.3722 - 3.3724 of this proposal. While it would still remain the responsibility of the insurer to either meet the requirements or ensure that the requirements are met in accordance with §3.3703(c), the factors and components affecting the cost of compliance with the requirements would vary for each requirement. The department estimates that this variation would be based upon the size of the network used by an insurer, the scope of the underlying contract between the insurer and the network, and the fees charged by the network for performance of the contract.

Many of the requirements of the proposed rule may also be substantially less costly than the estimates set forth in this proposal in the case of insurers already offering preferred provider benefit plans. Many of the proposed requirements for exclusive provider benefit plans are identical to regulations already applicable to preferred provider benefit plans, and the department estimates that most, if not all, of the insurers that will be offering exclusive provider benefit plan products will already be offering preferred provider benefit plan products that are compliant with the common provisions.

Section 3.3705: Nature of Communications with Insureds; Readability, Mandatory Disclosure Requirements, and Plan Designations. Amended §3.3705(b)(1) imposes a requirement on exclusive provider plans to disclose to current or prospective group contract holders or insureds that the exclusive provider contract only provides benefits for services received from preferred providers, except as otherwise noted. Amended §3.3705(f) modifies the notice requirements concerning rights of insured participants by requiring that the notice of rights required by §3.3705(f) also be provided in disclosures made under §3.3705(b) and by requiring a separate notice template with language that is tailored to exclusive provider benefit plans. These requirements could result in costs to comply for insurers.

The department expects that insurers will avoid any mailing costs as a result of compliance with the §3.3705(b) and (f) amendments by providing the notice along with the policy or certificate at issuance or renewal and within the disclosure document that is already required by §3.3705(b). Therefore, the department's estimate of costs for an insurer to comply with the amendments to §3.3705(b) and (f) is based on: (i) the cost of administrative staff to amend the current documents and prepare the new required notice of rights for inclusion in all policies, certificates, disclosures, and outlines of coverage; and (ii) the cost to print additional pages for printed documents.

(i) Cost of administrative staff to prepare the required notice of rights for inclusion in all policies, certificates, disclosures, and outlines of coverage. The department estimates that preparation of the required amendments and notice of rights for inclusion in policies, certificates, disclosures, and outlines of coverage as specified in §3.3705(b) and (f) will likely require a one-time cost of approximately two to 10 hours of administrative staff time. The cost to the insurer will vary depending on whether the insurer elects to have an administrative assistant, a general operations manager, or a combination of both positions, perform this function.

(ii) Cost to print additional pages. The department expects that an insurer will incur a cost for printing the required notice of rights specified in §3.3705(f) in all policies, certificates, disclosures, and outlines. The department estimates that this cost will be approximately 6 to 8 cents per page for printing and paper and that each notice of rights will require approximately one or two printed pages. It is likely that the insurer has the information necessary to determine its individual printing costs necessary for compliance with §3.3705(f), including the number of pages that will need to be printed and in-house or out-of-house printing costs. An insurer's potential printing costs may vary if the insurer does not use in-house printing. An insurer's costs will also vary based upon the number of policies, certificates, and outlines of coverage for which the insurer must include the notice of rights. The total cost to comply with §3.3705(f) could also vary depending on the insurer's administrative processes.

Section 3.3721 and §3.3722: Required Network Approval, Application, Qualifying Examination, and Modifications. New §3.3721 requires an insurer to complete a qualifying examination and obtain approval from the department that the insurer's exclusive provider network is in compliance with the requirements of Subchapter X prior to entering the exclusive provider benefit plan market. New §3.3722 provides the content and filing requirements for the initial application, requirements that specified doc-

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documents be available for the qualifying examination, and requirements for any subsequent modifications of the network.

The department estimates that an insurer's administrative staff or general operations manager will provide most if not all of the labor necessary to assemble and file an application for approval. The department estimates that it would be reasonably necessary for an administrative assistant or a general operations manager to spend an average of six hours copying, printing, and combining the required documents, filling out the required application, and filing the completed application packet with the department. The department estimates that the labor cost to an insurer may vary depending on whether the insurer elects to have an administrative assistant, a general operations manager, or a combination of both, complete and file the application.

The department also estimates that it would be reasonably necessary for an insurer to employ a computer programmer to assist with the compilation of application contents required in §3.3722(c)(5), regarding the submission of a map of the service area, and in §3.3722(c)(9), regarding the submission of a map for each specialty and list of physicians, individual providers, and institutional providers. The department estimates that the number of hours necessary to determine service areas, maps, and provider lists will vary from plan to plan with a range from five to 15 hours of computer programmer labor to assist with the compilation of the required application contents.

New §3.3722(d) requires insurers to make available eight categories of documents for review during a qualifying exam, as set forth in new §3.3722(d)(1) - (8). The department estimates that it would be reasonably necessary for an insurer to temporarily employ both a general operations manager and an administrative assistant to ensure compliance with the proposed new section during the qualifying examination.

The department estimates that it would be reasonably necessary for a general operations manager to spend an average of three hours identifying and collecting the applicable documents for the qualifying examination. The department further estimates that it would be reasonably necessary for an administrative assistant to spend an average of two hours copying or printing and combining the required documents. Additionally, the department estimates insurers may incur additional costs necessary to print or copy the required documents. The average print and copy costs necessary for compliance could vary slightly for each plan depending upon the number of pages necessary to print or copy.

Though the department has identified factors attributable to the cost of compliance with new §3.3722(d), it is not possible for the department to estimate the absolute total amount of compliance costs that an insurer could incur because there are numerous factors involved that prevent a general quantification for all insurers, including the size of a plan and the number of additional relevant documents requested by the department during any given examination. If an insurer has a larger than average plan and the department determines that additional relevant documents are necessary to be reviewed during an examination, the cost for making the required documents available for a qualifying examination will be accordingly higher. The estimated cost to comply with the new subsection represents an estimate for an insurer with an average plan size, with documents stored in electronic format, and with a simple qualifying examination that does not require the department to request numerous additional documents.

New §3.3722(e) provides the application content and filing requirements for the approval of an expansion or reduction of an existing service area and for the approval of a new service area. The department estimates that an insurer's administrative staff or general operations manager will provide most if not all of the labor necessary for an insurer to apply for the certificate of compliance for the network modification. The department estimates that it would be reasonably necessary for an administrative assistant or a general operations manager to spend an average of six hours copying, printing and combining the required documents, filling out the required application, and filing the completed application packet with the department. The department therefore estimates that the labor cost to an insurer will vary depending on whether the insurer elects to have an administrative assistant, a general operations manager, or a combination of both, complete and file the application.

The department also estimates that it would be reasonably necessary for an insurer to employ a computer programmer to assist with the compilation of the application contents required in §3.3722(e) regarding the submission of a map of the existing and proposed service areas; a map for each specialty; and lists of physicians, individual providers, and institutional providers. The department estimates that the number of hours necessary to compare the existing and proposed service areas for changes, compile maps, and compile the required network configuration information will vary from plan to plan with a range from five to 15 hours of computer programmer labor to assist with the compilation of the required application contents. Additionally, the department estimates that an insurer may incur additional cost necessary to print and copy the application, procedures, and additional paperwork to complete the application and additional cost necessary to mail the completed application. The average print, copy, and postage costs necessary for compliance could vary slightly for each plan depending upon the number of pages necessary to print, copy, and mail per application.

The estimated cost to comply with the new sections represents an estimate for an insurer with average existing and proposed service areas in Texas, as compared to service areas the department has seen in past HMO and preferred provider benefit plan filings. The department estimates that costs will vary for insurers opting for smaller or larger service areas. Additionally, the department estimates insurers may incur additional cost necessary to print, copy, and mail the completed application. The department estimates that print, copy, and mail costs could vary slightly for each plan depending upon the number of pages necessary to print, copy, and file per application.

**Proposed §3.3723: Examinations.** New §3.3723(c) requires that insurers make their books and records relating to their operations available to the department to facilitate an examination. New §3.3723(d) further requires insurers to provide a copy of any contract, agreement, or other arrangement between the insurer and a physician or provider upon request by the commissioner. Finally, new §3.3723(f) requires insurers to make available seven additional categories of documents for review, as set forth in new §3.3723(f)(1) - (7). Pursuant to §3.3723(a), examinations will occur at least once every five years.

The department estimates that §3.3723(c), (d), and (f) could result in costs to comply for insurers and has determined that the total estimated cost for compliance could vary based upon certain components. The components the department considered include: (i) the cost of identifying, collecting, producing, and printing or copying the required documents for each examina-
tion; (i) the cost of facilitating an examination in compliance with §3.3723(c); (iii) the cost of auto-mapping software (for example, Geo-Access) to make the required maps available for review in compliance with §3.3723(f)(5); and (iv) the cost of information technology staff necessary to use the auto-mapping software.

The department estimates that it would be reasonably necessary for an insurer to employ a general operations manager, an administrative assistant, and a functional division director from each of the insurer's functional divisions to make the required documents available to the department during a subsequent examination. The department estimates that it would be reasonably necessary for a general operations manager to spend an average of three hours identifying and collecting the applicable documents per examination and to spend an average of two to 10 hours reviewing deficiencies and generating corrected responses. This estimate could vary, depending on the accuracy and completeness of the documents produced from each functional division and number of functional divisions an insurer opts to include within its organizational structure. The department additionally estimates that it would be reasonably necessary for an administrative assistant to spend an average of two hours copying or printing and combining the required documents per examination. The department further estimates that it would be reasonably necessary for a functional division director to spend an average of two hours of time gathering, reviewing, and producing required documents and to spend an average of one hour correcting any deficiencies per examination.

In addition, the department estimates that it would be reasonably necessary for an insurer to employ a general operations manager and a functional division director from each of the insurer's functional divisions to facilitate an examination in compliance with §3.3723(c). The department estimates that it would be reasonably necessary for a general operations manager and each functional division director to spend an average of six hours each per examination facilitating the examination by attending meetings with staff from the department. The total amount of time necessary for an insurer's functional division director to facilitate an examination will vary from plan to plan, depending upon the number of functional divisions the insurer opts to include within its organizational structure and the complexity of the issues that arise during the examination.

The department estimates that it would be reasonably necessary for an insurer to procure auto-mapping software, like Geo-Access or ArcGIS, to make the required maps available for review in compliance with §3.3723(f)(5) and to employ information technology staff to use the auto-mapping software. The department estimates that the initial cost of procuring ArcGIS software is $3,000 to $5,000. This is based on the cost estimates received from web-based searches conducted by department staff for software availability and price quotes. The department also estimates that it would be reasonably necessary for an insurer's computer programmer to spend an average of five to 15 hours operating the auto-mapping software, determining service areas, and printing the required maps. It is likely that insurers with dense, limited service areas would be able to provide the necessary information with lower costs because of a decreased amount of time needed to generate the necessary information.

Additionally, the department estimates that the average printing and copying costs necessary for compliance could vary slightly for each plan depending upon the number of pages necessary to print or copy per examination. Though the department has identified factors attributable to the cost of compliance with new §3.3723, it is not possible for the department to estimate the absolute total amount of compliance costs that an insurer could incur because there are numerous factors involved that limit reliable quantification by the department, including plan size and the number of relevant documents that might be requested by the department during any given examination. If an insurer has a larger than average plan and the department determines that additional relevant documents are necessary to be reviewed during an examination, the cost for making the required documents available for a qualifying examination will be accordingly higher. The estimated cost to comply with the new subsection represents an estimate for an insurer with an average plan size, with documents stored in electronic format, and with a simple subsequent examination that does not require the department to request numerous additional documents. If it is necessary for the department to perform additional exams during the five year period, the costs will be accordingly higher.

Section 3.3724: Quality Improvement Program. New §3.3724(a) requires that an insurer develop and maintain an ongoing quality improvement program. The quality improvement program must include: (i) a written description of the program outlining organizational structure, functional responsibilities, and meeting frequency; (ii) an annual work plan that includes objective and measurable goals, planned activities, timeframes, responsible individuals, and evaluation methodologies for 13 program areas as set forth in new §3.3724(a)(2)(B); (iii) an annual written report on the quality improvement program that includes information regarding completed activities, trends of clinical and service goals, program performance, and general conclusions; (iv) a credentialing process for the selection and retention of contracted physicians and providers; and (v) a peer review procedure for physicians and providers to obtain recommendations regarding credentialing decisions.

New §3.3724(b) requires an insurer's governing body to appoint a quality improvement committee, approve the quality improvement program, approve an annual quality improvement plan, meet at least once a year to review the quality improvement committee report, and to review the annual written report of the quality improvement program. Finally, new §3.3724(c) further requires the quality improvement committee to meet regularly and provide an ongoing evaluation of the overall effectiveness of the quality improvement program.

The department estimates that new §3.3724 could result in compliance costs for insurers. The department has determined that the total estimated cost for an insurer to comply with the new subsections could vary based upon certain components: The components the department considered include the cost of: (i) hiring staff necessary to develop and maintain an ongoing quality improvement program in compliance with new §3.3724(a); (ii) hiring a qualified credentialing organization or an in-house credentialing body to comply with the credentialing function requirements in new §3.3724(a)(4); (iii) compensating members of the required credentialing committee to comply with new §3.3724(a)(5); (iv) conducting annual meetings in compliance with new §3.3724(b); (v) compensating members of the quality improvement committee for its on-going evaluation of quality improvement activities to comply with new §3.3724(c); and (vi) copying, printing, and mailing.

The department estimates that it would be reasonably necessary for an insurer to employ a medical director or registered nurse to serve as clinical director for the required quality improvement program, to employ administrative staff to assist the clinical di-
The department estimates that an insurer’s clinical director might provide most of the labor necessary to develop and maintain an ongoing quality improvement program, including providing the required written description, drafting an annual work plan, drafting an annual written report, implementing the required credentialing process, and overseeing the peer review process. The department estimates that it would be reasonably necessary for a medical director or a registered nurse to spend between 10 and 40 hours per week developing and maintaining the quality improvement program. The department therefore estimates that the total average labor cost for an insurer’s clinical director to develop and maintain the quality improvement program in compliance with new §3.3724(a) could vary depending on the size of the network and whether the insurer hires a medical director or registered nurse to develop and maintain the quality improvement program.

The department estimates that an insurer’s administrative staff will provide some of the labor necessary to develop and maintain an ongoing quality improvement program in compliance with new §3.3724(a), including drafting, copying, printing, combining, and mailing the required work plan described in §3.3724(a)(2) and the required written report described in §3.3724(a)(3). The department estimates that it would be reasonably necessary for an administrative assistant to spend an average of six hours per week assisting the clinical director with the work plan and written report.

The department further estimates that it would be reasonably necessary for an insurer to employ a computer programmer to assist with the compilation of data necessary to track the requirements in §3.3724(a)(2), regarding the annual work plan, and in §3.3724(a)(3), regarding the annual written report. The department estimates that the number of hours necessary to compile data for the required work plan and written report will vary from plan to plan with an average range from five to 15 hours of computer programmer labor per year to assist the clinical director with the required submissions.

The department estimates that it would be reasonably necessary for an insurer to delegate credentialing functions to a qualified credentialing organization for a per-provider fee or employ an in-house credentialing body, including a peer review committee to review and approve credentialled providers. The department estimates that an insurer may incur costs for staff time spent researching credentials and for fees for accessing credentialing databases as a result of compliance with §3.3724(a)(4). The department has determined that an insurer may spend up to one hour per provider researching physician and provider credentials with an additional estimated access cost of $10 per physician to access the various credentialing databases. The department estimates that an insurer may opt to have an administrative assistant perform these tasks. The department estimates that this monthly cost component will vary for each insurer depending on how many providers are researched for credentialing and that each insurer has the information necessary to determine its approximate estimated cost.

It may be reasonably necessary for an insurer to provide compensation to members of the credentialing committee for the time necessary to review and make recommendations regarding credentialing decisions. It is not feasible for the department to estimate the total amount of cost attributable to compliance with new §3.3724(a)(5) because there are numerous factors involved that are not suitable to reliable quantification by the department, including factors like the size of the insurer’s service area(s), the number of physicians and providers requesting a peer review of a credentialing decision, variation in the negotiated fees of physicians and providers to participate in the committee, and the number of physicians and providers designated to the committee by the insurer. The department estimates that each insurer has the information necessary to determine its individual labor costs necessary to meet the requirements of new §3.3724(a)(5).

It may also be reasonably necessary for an insurer to provide additional compensation to members of the governing body for time necessary to plan and conduct the required annual meetings of the governing body. However, it is not feasible for the department to estimate the total amount of cost attributable to compliance with new §3.3724(b), because there are numerous factors involved that are not suitable for reliable quantification by the department, including factors like the size of the insurer’s service area(s) and the current salaries of the insurer’s governing body members. The department estimates that each insurer has the information necessary to determine its individual labor costs necessary to meet the requirements of new §3.3724(b).

The department estimates that it may be reasonably necessary for an insurer to provide compensation to members of the appointed quality improvement committee for time necessary to meet regularly and to provide an ongoing evaluation of the overall effectiveness of the quality improvement program. However, it is not feasible for the department to estimate the total amount of cost attributable to compliance with new §3.3724(c) because there are numerous factors involved that are not suitable for reliable quantification by the department, including factors like the size of the insurer’s service area, the variation in the negotiated fees of physicians and providers agreeing to participate in the committee, and the number of physicians and providers appointed to the committee by the insurer’s governing body. The department estimates that each insurer has the information necessary to determine its individual labor costs necessary to meet the requirements of new §3.3724(c).

Additionally, the department estimates that insurers may incur additional cost to print or copy the required written description, annual work plan, annual written report, required committee reports, procedures, and additional paperwork necessary to comply with new §3.3724. The average print, copy, and postage costs necessary for compliance could vary for each plan depending upon the number of pages necessary to print and copy per year.

Section 3.3725: Nonpreferred Provider Claims. New §3.3725(d) requires insurers reimbursing a nonpreferred provider under §3.3725(a), (b), or (c)(2) to ensure that an insured is held harmless for any amounts beyond the copayment, deductible, and coinsurance percentage that the insured would have paid had the insured received services from a preferred provider. New §3.3725(e) provides that, upon finding that a claim from a nonpreferred provider under §3.3725(a), (b), or (c)(2) is payable, an insurer must issue payment at a usual and customary rate or at an agreed rate when the medically necessary covered services are not available through a preferred provider and have been requested by a preferred provider. The department estimates that §3.3725 could result in costs to comply for insurers. The department has determined that the total estimated cost for an insurer to comply with the new section could vary based upon the following components: (i) the
cost of information technology staff necessary to program the insurer's computer software system to pay claims as required under §3.3725 and (ii) the cost of acquiring additional data concerning usual and customary rates.

The department estimates that an insurer's information technology staff will provide most if not all of the labor necessary to program the insurer's computer software system to pay claims. The department estimates that it would be reasonably necessary for a computer programmer to spend an average of 10 to 100 hours making necessary programming changes to the insurer's software, with anticipated variation depending upon the complexity of the insurer's current computer software system.

The department estimates that it may be reasonably necessary for an insurer to incur an additional annual cost to acquire additional data for determining usual and customary rates for claims payment. It is not feasible for the department to estimate the total amount of cost attributable to compliance with new §3.3725 regarding the determination of usual and customary rates, because there are numerous factors involved that are not suitable to reliable quantification by the department, including factors like the insurer's current reimbursement methodologies, the market share of this insurer, the service areas the data will be required to cover, and other facts specific to each insurer. The department estimates that each insurer has the information necessary to determine its individual costs necessary to determine usual and customary rates for its service areas.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.

As required by the Government Code §2006.002(c), the department has determined that the proposed amendments may have an adverse economic effect on 10 to 40 small or micro businesses that must comply with the proposed rules. The cost of compliance with the proposal will not vary between large businesses and small or micro businesses on the basis that a business is a large, small, or micro business, and the department's cost analysis and resulting estimated costs for insurers in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro businesses. The total cost to large businesses and small or micro businesses to comply with the updated requirements for preferred provider benefit plans or the new requirements applicable to exclusive provider benefit plans is not dependent upon the size of the insurer, but rather is dependent upon the individual insurer's particular cost for each component. The department estimates that an individual insurer's particular cost for each component will vary based on multiple factors as described in the Public Benefit/Cost Note portion of this proposal.

In accordance with the Government Code §2006.002(c-1), the department has considered other regulatory methods to accomplish the objectives of the proposal that will also minimize any adverse impact on small and micro businesses.

The primary objective of the proposal is to provide health insurers offering health plan coverage in Texas with additional options to offer lower cost health plans to employers and individual consumers in a way that is consistent with HB 1772 by authorizing and providing the regulatory requirements for exclusive benefit provider plans.

The other regulatory methods considered by the department to accomplish the objectives of the proposal and to minimize any adverse impact on small and micro businesses include: (i) not proposing the amendments; (ii) proposing different requirements for small and micro businesses; and (iii) excluding small and micro businesses from applicability under the amendments and new sections included in this proposal.

Not proposing the amendments. As previously noted, the purpose of this rule proposal is to provide the regulatory requirements for exclusive benefit provider plans and to align the regulations applicable to preferred and exclusive provider benefit plans. If the rule were not proposed, no rules could be adopted that provide regulatory requirements for exclusive benefit provider plans. Current rules are in place that address preferred provider benefit plans. If the department does not create exceptions to those rules, some of them might be applicable to an insurer attempting to implement an exclusive provider benefit plan.

Uncertainty regarding which rules apply to exclusive provider benefit plans and which rules do not apply to them would hamper the creation of exclusive provider benefit plans, and the result would be the delay or lack of creation of exclusive provider benefit plans. This, in turn, would frustrate the intent of HB 1772 to allow insurers to offer lower cost health plans to employers and individual consumers by permitting plans with closed networks where only services provided by network providers are covered.

For this reason, the department has rejected this option.

Proposing different requirements for small and micro businesses. The department has worked with stakeholders since the passage of HB 1772 to develop amendments to the current rules applicable to preferred provider benefit plans and new rules applicable to exclusive provider benefit plans that best achieve the goals of HB 1772. Many changes have been made to earlier drafts of the proposed amendments and new sections based on input from stakeholders and stakeholder groups, including groups that have among their membership small businesses. Therefore, the department believes that proposing different standards than those included in this proposal would not provide a better option for small or micro businesses. Additionally, the department anticipates that many costs of compliance will be lower for insurers that have small service areas and networks, including small and micro businesses, which may have smaller service areas and networks than larger insurers. For example, in these instances this would reduce the impact of requirements for credentialing and quality improvement for small and micro businesses.

Also, the department believes that the potential harm of lessened regulatory requirements to consumers and providers would outweigh the potential benefit to small or micro businesses. The proposed requirements include provisions addressing notice, claim payment, and network access and quality. Since many of the regulatory requirements are not reflected in policy documents, consumers and providers would not know what different regulations a small or micro business insurer would be following.

In addition, exempting small and micro businesses from these requirements or reducing these requirements for those insurers within their service areas could result in additional costs and potentially less access to care or quality of care for the insureds of small or micro business insurers. Consumers would also be generally unable to make adequate comparisons and informed decisions in shopping for health insurance if different insurers were treated differently under the proposed rules, because consumers generally would not know what types of care the consumers would require in the future and because it would be diffic-
cult to recognize which insurers are large and small or to recognize the differences in the regulatory requirements applicable to the small versus large insurers.

For these reasons, the department has rejected this option.

Excluding small and micro businesses from applicability under the new sections included in this proposal. As addressed in the public benefit/cost note portion of this proposal, anticipated costs under the proposal are the result of the new requirements applicable to exclusive provider benefit plans. If small and micro businesses were excluded from applicability under the new sections applicable to exclusive provider benefit plans, they would not face the economic impacts. However, if small and micro businesses were excluded from applicability under the new sections applicable to exclusive provider benefit plans, they would not be subject to the credentialing or quality of care requirements, network adequacy standards or other consumer protections included in the proposed rules. The department believes that the lack of these consumer protections would create potential harm for insureds that would outweigh the potential benefit to small or micro businesses.

Additionally, failure to adopt rules applicable to small and micro businesses would be contrary to the Insurance Code. For example, failure to adopt network adequacy standards applicable to small and micro businesses would conflict with the Insurance Code §1301.055, which requires the commissioner to adopt network adequacy standards adapted to local markets in which an insurer offering a preferred provider benefit plan operates.

For these reasons, the department has rejected this option.

TAKINGS IMPACT ASSESSMENT. The department has determined that this proposal affects no private real property interests, nor does it restrict or limit an owner's right to property that would otherwise exist in the absence of government action. Therefore, this proposal 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 Monday, July 30, 2012, to Sara Waitt, General Counsel, by email at: chiefclerk@tdi.state.tx.us or by mail at: 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 Doug Danzeiser by email at: LHLcomments@tdi.state.tx.us or by mail at: Regulatory Matters, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The commissioner will consider the proposed amendments to §§3.3701 - 3.3710 and new §§3.3720 - 3.3725 in a public hearing under Docket No. 2739 scheduled for July 16, 2012, at 9:30 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. The department will consider written and oral comments presented at the hearing.

DIVISION 1. GENERAL REQUIREMENTS

28 TAC §§3.3701 - 3.3710

STATUTORY AUTHORITY. The amendments are proposed under the Insurance Code §§1301.003, 1301.0042, 1301.007, and 36.001. The Insurance Code §1301.003 provides that an exclusive provider benefit plan that meets the requirements of Chapter 1301, relating to Preferred Provider Benefit Plans, is permitted. The Insurance Code §1301.0042 provides that, except for dental care benefits, a provision of the Insurance Code or other insurance law that applies to a preferred provider benefit plan also applies to an exclusive provider benefit plan unless the provision is determined to be inconsistent with the function and purpose of an exclusive provider benefit plan. The Insurance Code §1301.0042 also authorizes the commissioner to determine whether a provision is inconsistent with the function and purpose of an exclusive provider benefit plan.

The Insurance Code §1301.007 authorizes the commissioner to adopt rules to implement Chapter 1301, relating to Preferred Provider Benefit Plans, and to ensure reasonable accessibility and availability of preferred provider services to residents of this state.

The Insurance Code §36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §§401.054, 541.003, 541.051, 751.303, 1251.006, 1301.001, 1301.003, 1301.0041, 1301.0042, 1301.0045, 1301.005, 1301.0051, 1301.0052, 1301.0053, 1301.0054, 1301.0055, 1301.0056, 1301.006, 1301.007, 1301.051, 1301.057, 1301.058, 1301.066, 1301.134, 1301.136, 1301.152 - 1301.154, 1301.160, 1301.161, 1456.003, 1456.006, 1661.002, 1701.055, 1701.057, and 1701.060; Insurance Code Chapters 82, 83, 544, 1451, and 1460; and Insurance Code 1301, Subchapters B and C.

§3.3701. Applicability and Scope [Application].

(a) Except as otherwise specified in this subchapter, [the sections of this subchapter apply to any preferred provider benefit plan or exclusive provider benefit plan as specified in this subchapter.

(1) This subchapter applies to any preferred or exclusive provider benefit plan policy that is offered, delivered, issued for delivery, or renewed on or after 120 days from the effective date of this section [May 10, 2012] Any preferred or exclusive provider benefit plan policy delivered, issued for delivery, or renewed prior to this application date [May 10, 2012] is subject to the statutes and provisions of this subchapter in effect at the time the policy was delivered, issued for delivery, or renewed.

(2) This subchapter does not apply to:

(A) provisions for dental care benefits in any health insurance policy; or

(B) an exclusive provider benefit plan regulated under Subchapter KK of this chapter (relating to Exclusive Provider Benefit Plan) written by an insurer pursuant to a contract with the Health and Human Services Commission to provide services under the Texas Children's Health Insurance Program, Medicaid, or with the Statewide Rural Health Care System.

(b) - (e) (No change.)

(f) A provision of this title applicable to a preferred provider benefit plan is applicable to an exclusive provider benefit plan unless specified otherwise.

§3.3702. Definitions.

(a) Words and terms defined in the Insurance Code Chapter 1301 have the same meaning when used in this subchapter, unless the context clearly indicates otherwise.
The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Adverse determination--As defined in the Insurance Code §4201.002(1).

(2) Allowed amount--The amount of a billed charge that an insurer determines to be covered for services provided by a non-preferred provider. The allowed amount includes both the insurer's payment and any applicable deductible, copayment, or coinsurance amounts for which the insured is responsible.

(3) Billed charges--The charges for medical care or health care services included on a claim submitted by a physician or provider.

(4) Complainant--As defined in §21.2502 of this title (relating to Definitions).

(5) Complaint--As defined in §21.2502 of this title.

(6) Contract holder--An individual who holds an individual health insurance policy, or an organization that holds a group health insurance policy.

(7) Exclusive provider network--The collective group of physicians and health care providers that are available to an insured under an exclusive provider benefit plan and that are directly or indirectly contracted with the insurer of an exclusive provider benefit plan to provide medical or health care services to individuals insured under the plan.

(8) Facility--
   (A) an ambulatory surgical center licensed under the Health and Safety Code Chapter 243;
   (B) a birthing center licensed under the Health and Safety Code Chapter 244;
   (C) a hospital licensed under the Health and Safety Code Chapter 241.

(9) Facility-based physician--A radiologist, an anesthesiologist, a pathologist, an emergency department physician, or a neonatologist:
   (A) to whom a facility has granted clinical privileges; and
   (B) who provides services to patients of the facility under those clinical privileges.

(10) Health care provider or provider--As defined in the Insurance Code §1301.001(1).

(11) Health insurance policy--As defined in the Insurance Code §1301.001(2).

(12) Health maintenance organization (HMO)--As defined in the Insurance Code §843.002(14).

(13) Hospital--As defined in the Insurance Code §1301.001(3), a licensed public or private institution as defined by the Health & Safety Code Chapter 241 or the Health & Safety Code Title 2, Subtitle C.

(14) Institutional provider--As defined in the Insurance Code §1301.001(4).

(15) Insurer--As defined in the Insurance Code §1301.001(5).

(16) In-network--Medical or health care treatment, services, or supplies furnished by a preferred provider, or a claim filed by a preferred provider for the treatment, services, or supplies.

(17) Nonpreferred provider--A physician or health care provider, or an organization of physicians or health care providers, that does not have a contract with the insurer to provide medical care or health care on a preferred benefit basis to insureds covered by a health insurance policy issued by the insurer.

(18) Out-of-network--Medical or health care treatment services, or supplies furnished by a nonpreferred provider, or a claim filed by a nonpreferred provider for the treatment, services, or supplies.

(19) Pediatrician--A physician with appropriate education, training, and experience whose practice is limited to providing medical and health care services to children and young adults.

(20) Prospective insured--As defined in the Insurance Code §1301.158(a).

(21) Quality assessment--As defined in the Insurance Code §1301.059(a).

(22) Rural area--
   (A) a county with a population of 50,000 or less as determined by the United States Census Bureau in the most recent decennial census report;
   (B) an area that is not designated as an urbanized area by the United States Census Bureau in the most recent decennial census report; or
   (C) any other area designated as rural under rules adopted by the commissioner, notwithstanding subparagraphs (A) and (B) of this paragraph.

(23) Service area--As defined in the Insurance Code §1301.001(10).

(24) Urgent care--Medical or health care services provided in a situation other than an emergency that are typically provided in a setting such as a physician or individual provider's office or urgent care center, as a result of an acute injury or illness that is severe or painful enough to lead a prudent layperson, possessing an average knowledge of medicine and health, to believe that the person's condition, illness, or injury is of such a nature that failure to obtain treatment within a reasonable period of time would result in serious deterioration of the condition of the person's health.

(25) Utilization review--As defined in the Insurance Code §4201.002(13).
§3.3703. Contracting Requirements.

(a) An insurer marketing a preferred provider benefit plan must [is required to] contract with physicians and health care providers to assure that all medical and health care services and items contained in the package of benefits for which coverage is provided, including treatment of illnesses and injuries, will be provided under the plan in a manner that assures both availability and accessibility of adequate personnel, specialty care, and facilities. Each contract must [is required to] meet the following requirements:

(1) A contract between a preferred provider and an insurer may not restrict a physician or health care provider from contracting with other insurers, preferred provider plans, preferred provider networks or organizations, exclusive provider benefit plans, exclusive provider networks or organizations, health care collaboratives, or HMOs.

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

(8) An insurer’s contract with a physician, physician group, or practitioner must [is required to] have a mechanism for the resolution of complaints that are initiated by an insured, a physician, physician group, or practitioner. The mechanism must provide for reasonable due process including, in an advisory role only, a review panel selected as specified in subsection (b)(2) of §3.3706 of this title [subchapter] (relating to Designation as a Preferred Provider, Decision to Withhold Designation, Termination of a Preferred Provider, Review of Process).

(9) - (10) (No change.)

(11) A contract between a preferred provider and an insurer must require the insurer to comply with all applicable statutes and rules pertaining to prompt payment of clean claims, [including the Insurance Code Chapter 1301, Subchapter C and §§21.2801 - 21.2820 of this title (relating to Submittal of Claim),] with respect to payment to the provider for covered services that are rendered to insureds.

(12) - (18) (No change.)

(19) A contract between a preferred provider and an insurer must require written notice to the provider upon termination of the contract by the insurer, and in the case of termination of a contract between an insurer and a physician or practitioner, the notice must include the provider’s right to request a review, as specified in §3.3706(d) of this title [subchapter].

(20) - (25) (No change.)

(26) A contract between an insurer and a facility must require that the facility give notice to the insurer of the termination of a contract between the facility and a facility-based physician group that is a preferred provider for the insurer as soon as reasonably practicable, but not later than the fifth business day following the termination of the [a] contract [between the facility and a facility-based physician group that is a preferred provider for the insurer].

(27) This subsection does not prohibit other contractual provisions permitted by law.

(b) (No change.)

(c) An insurer may enter into an agreement with a preferred provider organization, an exclusive provider network, or a health care collaborative for the purpose of offering a network of preferred providers, provided that it remains the insurer’s responsibility to:

(1) meet the requirements of the Insurance Code Chapter 1301 and this subchapter; [ac]

(2) ensure that the requirements of the Insurance Code Chapter 1301 and this subchapter are met; and[ ]

(3) provide all documentation to demonstrate compliance with all applicable rules upon request by the department.

§3.3704. Freedom of Choice; Availability of Preferred Providers.

(a) Fairness requirements [Requirements]. A preferred provider benefit plan is not considered unjust under the Insurance Code §§1701.002 - 1701.005; §§1701.051 - 1701.060; §§1701.101 - 1701.103; and §§1701.151, or to unfairly discriminate under the Insurance Code Chapter 542, Subchapter A, or §§544.051 - 544.054, or to violate §§1451.001, 1451.053, 1451.054, or §§1451.101 - 1451.127 of the Insurance Code provided that:

(1) pursuant to the Insurance Code §§1251.005, 1251.006, 1301.003, 1301.006, 1301.051, 1301.053, 1301.054, 1301.055, 1301.057 - 1301.062, 1301.064, 1301.065, 1301.151, 1301.156, and 1301.201, the preferred provider benefit plan does not require that a service be rendered by a particular hospital, physician, or practitioner, except as required under the terms of an exclusive provider benefit plan;

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

(5) insureds have the right to emergency care services as set forth in the Insurance Code §1301.0053 and §1301.155, and §3.3708 of this title (relating to Payment of Certain Basic Benefit Claims and Related Disclosures) and §3.3725 of this title (relating to Payment of Certain Out-Of-Network Claims);

(6) the basic level of coverage, excluding a reasonable difference in deductibles, is not more than 50 percent less than the higher level of coverage, except as provided under an exclusive provider benefit plan. A reasonable difference in deductibles is determined considering the benefits of each individual policy;

(7) the rights of an insured to exercise full freedom of choice in the selection of a physician or provider, or in the selection of a preferred provider under an exclusive provider benefit plan, are not restricted by the insurer;

(8) if the insurer is issuing other health insurance policies in the service area that do not provide for the use of preferred providers, the basic level of coverage of a plan that is not an exclusive provider benefit plan is reasonably consistent with [such] other health insurance policies offered by the insurer that do not provide for a different level of coverage for use of a preferred provider;

(9) (No change.)

(10) a preferred provider benefit plan that is not an exclusive provider benefit plan may provide for a different level of coverage for use of a nonpreferred provider if the referral is made by a preferred provider only if full disclosure of the difference is included in the plan and the written description as required by §3.3705(b) of this title [subchapter] (relating to Nature of Communications with Insureds; Readability, Mandatory Disclosure Requirements, and Plan Designations); [and]

(11) both preferred provider benefits and, except in an exclusive provider benefit plan, basic level benefits are reasonably available to all insureds within a designated service area; [and[ ]

(12) if medically necessary covered services are not available through preferred physicians or providers, insureds have the right to receive care from a nonpreferred provider in accordance with the Insurance Code §1301.005 and §1301.0052, and §3.3708 and §3.3725 of this title, as applicable.

(b) Payment of nonpreferred providers [Nonpreferred Providers]. Payment by the insurer must be made for covered services
of a nonpreferred provider in the same prompt and efficient manner as to a preferred provider.

(c) Retaliatory action prohibited [Action Prohibited]. An insurer is prohibited from engaging in retaliatory action against an insured, including cancellation or refusal to renew a policy, because the insured or a person acting on behalf of the insured has filed a complaint against the insurer or a preferred provider or has appealed a decision of the insurer.

(d) Access to certain institutional providers [Certain Institutional Providers]. In addition to the requirements for availability of preferred providers set forth in the Insurance Code §1301.005, any insurer offering a preferred provider benefit plan must [is required to] make a good faith effort to have a mix of for-profit, non-profit, and tax-supported institutional providers under contract as preferred providers in the service area to afford all insureds under the [such] plan freedom of choice in the selection of institutional providers at which they will receive care, unless the [such a] mix proves to be not feasible due to geographic, economic, or other operational factors. An insurer must [is required to] give special consideration to contracting with teaching hospitals and hospitals that provide indigent care or care for uninsured individuals as a significant percentage of their overall patient load.

(e) Network requirements [Requirements]. Each preferred provider benefit plan must [is required to] include a health care service delivery network that complies with the Insurance Code §1301.005 and §1301.006 and the local market adequacy requirements described in this section. An adequate network must [is required to]:

1. (1) - (11) (No change.)

(f) Network monitoring and corrective action [Monitoring and Corrective Action]. Insurers must [are required to] monitor compliance with subsection (e) of this section on an ongoing basis, taking any needed corrective action as required to ensure that the network is adequate.

(g) Service areas [Areas]. For purposes of this subchapter, a preferred provider benefit plan may have one or more contiguous or noncontiguous service areas, but any service areas that are smaller than statewide must [are required to] be defined in terms of one of the following:

1. (1) one or more of the 11 Texas geographic regions designated in §3.3711 of this title [subchapter] (relating to Geographic Regions);
2. (2) - (3) (No change.)

§3.3705. Nature of Communications with Insureds; Readability, Mandatory Disclosure Requirements, and Plan Designations.

(a) (No change.)

(b) Disclosure of terms and conditions of the policy [Terms and Conditions of the Policy]. The insurer is required, upon request, to provide to a current or prospective group contract holder or a current or prospective insured an accurate written description of the terms and conditions of the policy that allows the current or prospective group contract holder or current or prospective insured to make comparisons and informed decisions before selecting among health care plans. An insurer may utilize its handbook to satisfy this requirement provided that the insurer complies with all requirements set forth in this subsection including the level of disclosure required. The written description must [is required to] be in a readable and understandable format, by category, and must [is required to] include a clear, complete, and accurate description of these items, as applicable, in the following order:

1. (1) a statement that the entity providing the coverage is an insurance company[,] the name of the insurance company[,] and that, in the case of a preferred provider benefit plan, the insurance contract contains preferred provider benefits; and, in the case of an exclusive provider benefit plan, that the contract only provides benefits for services received from preferred providers, except as otherwise noted;
2. (2) - (8) (No change.)
3. (9) any authorization requirements [prior authorizations], including preauthorization review, concurrent review, post-service review, and postpayment review; and any penalties or reductions in benefits resulting from the failure to obtain any required authorizations;
4. (10) - (11) (No change.)
5. (12) a current list of preferred providers and complete descriptions of the provider networks, including names and locations of physicians and health care providers, and a disclosure of which preferred providers will not accept new patients[,] both of these items [which] may be provided electronically, if notice is also provided in the disclosure required by this subsection regarding how a nonelectronic copy may be obtained free of charge [with the agreement of the insured provided that information about how to obtain a nonelectronic provider listing free of charge is also provided];
6. (13) (No change.)
7. (14) information that is updated at least annually regarding whether an access plan pursuant to §3.3709 of this title (relating to Annual Network Adequacy Report; Access Plan) applies to the plan and that includes with the following [network demographics for each service area, if the preferred provider benefit plan is not offered on a statewide service area basis, or for each of the 11 regions specified in §3.3711 of this subchapter (relating to Geographic Regions), if the plan is offered on a statewide service area basis]:
   1. (A) if an access plan applies to facility services or to internal medicine, family/general practice, pediatric practitioner practice, obstetrics and gynecology, anesthesia, psychiatry, or general surgery services, this must be specifically noted;
   2. (B) the information must be categorized by service area if the preferred provider benefit plan is not offered on a statewide service area basis, or for each of the 11 regions specified in §3.3711 of this title (relating to Geographic Regions), if the plan is offered on a statewide service area basis; and
   3. (C) the information must identify how the access plan may be obtained or viewed.

   (1A) the number of insureds in the service area or region;

   (1B) for each provider area of practice, including at a minimum internal medicine, family/general practice, pediatric practitioner practice, obstetrics and gynecology, anesthesia, psychiatry, and general surgery, the number of preferred providers, as well as an indication of whether an active access plan pursuant to §3.3709 of this subchapter (relating to Annual Network Adequacy Report; Access Plan) applies to the services furnished by that class of provider in the service area or region and how such access plan may be obtained or viewed, if applicable; and

   (1C) for hospitals, the number of preferred provider hospitals in the service area or region, as well as an indication of whether an active access plan pursuant to §3.3709 of this subchapter applies to hospital services in that service area or region and how the access plan may be obtained or viewed.

   (c) Filing required [Required]. A copy of the written description required in subsection (b) of this section must be filed with the department with the initial filing of the preferred provider benefit plan.
and within 60 days of any material changes being made in the information required in subsection (b) of this section. Submission of listings of preferred providers as required in subsection (b)(12) of this section may be made electronically in a format acceptable to the department or by submitting with the filing the Internet website address at which the department may view the current provider listing. Acceptable formats include Microsoft Word and Excel documents. Electronic submission of the provider listing, if applicable, must be submitted to the following email [e-mail] address: LifeHealth@tdi.state.tx.us [hwen@tdi.state.tx.us]. Nonelectronic filings must [are required to] be submitted to the department at: Life/Health and HMO Intake Team [Filings Intake Division], Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas[,] 78714-9104.

(d) Promotional disclosures required [Disclosures Required]. The preferred provider benefit plan and all promotional, solicitation, and advertising material concerning the preferred provider benefit plan must [are required to] clearly describe the distinction between preferred and nonpreferred providers. Any illustration of preferred provider benefits must [is required to] be in close proximity to an equally prominent description of basic benefits, except in the case of an exclusive provider benefit plan.

(e) Internet website disclosures [Website Disclosures]. Insurers that maintain an Internet website providing information regarding the insurer or the health insurance policies offered by the insurer for use by current or prospective insureds or group contract holders must [are required to] provide:

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

(f) Notice of rights [Rights] under a network plan required [Network Plan Required]. An insurer must [is required to] include the notice specified in Figure: 28 TAC §3.3705(f)(1), for a preferred provider benefit plan that is not an exclusive provider benefit plan, or Figure: 28 TAC §3.3705(f)(2), for an exclusive provider benefit plan, §3.3705(f) in all policies, certificates, disclosures of policy terms and conditions provided pursuant to subsection (b) of this section, and outlines of coverage in at least 12 point font:

(1) Preferred provider benefit plan notice. Figure: 28 TAC §3.3705(f)(1)
[Figure: 28 TAC §3.3705(f)]

(2) Exclusive provider benefit plan notice. Figure: 28 TAC §3.3705(f)(2)

(g) Untrue or misleading information prohibited [Misleading Information Prohibited]. No insurer, or agent or representative of an insurer, may cause or permit the use or distribution of information which is untrue or misleading.

(h) Disclosure concerning access to preferred provider listing [Concerning Access to Preferred Provider Listing]. The insurer must [is required to] provide notice to all insureds at least annually describing how the insured may access a current listing of all preferred providers on a cost-free basis. The notice must include, at a minimum, information concerning how a nonelectronic copy of the listing may be obtained and a telephone number through which insureds may obtain assistance during regular business hours to find available preferred providers.

(i) Required updates of available provider listings [Updates of Available Provider Listings]. The insurer must [is required to] ensure that all electronic or nonelectronic listings of preferred providers made available to insureds are updated at least every three months.

(j) Annual provision of provider listing required in certain cases [Provision of Provider Listing Required in Certain Cases]. If no Internet-based preferred provider listing or other method of identifying current preferred providers is maintained for use by insureds, the insurer must [is required to] distribute a current preferred provider listing to all insureds no less than annually by mail, or by an alternative method of delivery if an [such] alternative method is agreed to by the insured, group policyholder on behalf of the group, or certificate holder.

(k) Reliance upon provider listing in certain cases [Upon Provider Listing in Certain Cases]. A claim for services rendered by a nonpreferred provider must be paid in the same manner as if no preferred provider had been available under §3.3708(b) - (d) of this title (relating to Payment of Certain Basic Benefit Claims and Related Disclosures) and §3.3725(d) - (f) of this title (relating to Payment of Certain Out-of-Network Claims), as applicable, [at the applicable preferred benefit coinsurance percentage] if an insured demonstrates that:

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

(l) Additional listing-specific disclosure requirements [Listing-Specific Disclosure Requirements]. In all preferred provider listings, including any Internet-based postings of information made available by the insurer to provide information to insureds about preferred providers, the insurer must [is required to] comply with the requirements in paragraphs (1) - (7) ([40]) of this subsection.

(1) (No change.)

(2) The provider information must include a method for insureds to identify, for each preferred provider hospital, the percentage of the total dollar amount of claims filed with the insurer by or on behalf of facility-based physicians that are not under contract with the insurer. The information must be available by class of facility-based physician, including radiologists, anesthesiologists, pathologists, emergency department physicians, and neonatologists.

(3) In determining the percentages specified in paragraph (2) of this subsection, an insurer may consider claims filed in a 12-month period designated by the insurer ending not more than 12 months before the date the information specified in paragraph (2) of this subsection is provided to the insured.

(4) [41] The provider information must indicate whether each preferred provider is accepting new patients.

(5) The preferred provider must designate those preferred providers that have notified the insurer of the preferred provider's participation in a regional quality of care peer review program.

(6) [60] The provider information must provide a method by which insureds may notify the insurer of inaccurate information in the listing, with specific reference to:

(A) information about the provider's contract status; and

(B) whether the provider is accepting new patients.

(7) [47] The provider information must provide a method by which insureds may identify preferred provider facility-based physicians able to provide services at preferred provider facilities.

(8) [69] The provider information must be provided in at least 10 point font [fonts of not less than 10-point type].

(9) [99] The provider information must specifically identify those facilities at which the insurer has no contracts with a class of facility-based provider, specifying the applicable provider class.

(10) [109] The provider information must be dated.
(m) Annual policyholder notice concerning use of access plan [Policyholder Notice Concerning Use of Access Plan]. An insurer operating a preferred provider benefit plan that relies upon an access plan as specified in §3.3709 of this title must [subchapter is required to] provide notice of this fact to each individual and group policyholder participating in the [such] plan at policy issuance and at least 30 days prior to renewal of an existing policy. The notice must include a link to any webpage listing of regions, counties, or ZIP codes [Codes] made available pursuant to subsection (e)(2) of this section.

[(n) Disclosure of Substantial Decrease in the Availability of Certain Preferred Providers. An insurer is required to provide notice as specified in this subsection of a substantial decrease in the availability of preferred facility-based physicians at a preferred provider facility.]

[(1) A decrease is substantial if:]

[(A) the contract between the insurer and any facility-based physician group that comprises 75 percent or more of the preferred providers for that specialty at the facility terminates; or]

[(B) the contract between the facility and any facility-based physician group that comprises 75 percent or more of the preferred providers for that specialty at the facility terminates; and the insurer receives notice as required under §3.3703(a)(26) of this subchapter (relating to Contracting Requirements).]

[(2) Notwithstanding paragraph (1) of this subsection, no notice of a substantial decrease is required if the requirements specified in either subparagraph (A) or (B) of this paragraph are met:]

[(A) alternative preferred providers of the same specialty as the physician group that terminates a contract as specified in paragraph (1) of this subsection are made available to insureds at the facility such that the percentage level of preferred providers of that specialty at the facility is returned to a level equal to or greater than the percentage level that was available prior to the substantial decrease; or]

[(B) the insurer provides to the Department, by e-mail to lwcn@tdi.state.tx.us, a certification of the insurer’s determination that the termination of the provider contract has not caused the preferred provider service delivery network for any plan supported by the network to be noncompliant with the adequacy standards specified in §3.3704 of this subchapter (relating to Freedom of Choice, Availability of Preferred Providers), as those standards apply to the applicable provider specialty.]

[(3) An insurer is required to prominently post notice of any contract termination specified in paragraph (1)(A) or (B) of this subsection and the resulting decrease in availability of preferred providers on the portion of the insurer’s website where its provider listing is available to insureds.]

[(4) Notice of any contract termination specified in paragraph (1)(A) or (B) of this subsection and of the decrease in availability of providers must be maintained on the insurer’s website until the earlier of:]

[(A) the date on which adequate preferred providers of the same specialty become available to insureds at the facility at the percentage level specified in paragraph (2)(A) of this subchapter;]

[(B) six months from the date that the insurer initially posts the notice; or]

[(C) the date on which the insurer provides to the Department, by e-mail to lwcn@tdi.state.tx.us, a certification as specified in paragraph (2)(B) of this subsection indicating the insurer’s determination that the termination of provider contract does not cause non-compliance with adequacy standards.]

[(5) An insurer is required to post notice as specified in paragraph (3) of this subsection and to update its Internet-based preferred provider listing as soon as practicable and in no case later than two business days after:]

[(A) the effective date of the contract termination as specified in paragraph (1)(A) of this subsection; or]

[(B) the later of:]

[(i) the date on which an insurer receives notice of a contract termination as specified in paragraph (1)(B) of this subsection; or]

[(ii) the effective date of the contract termination as specified in paragraph (1)(B) of this subsection.]

[(p) Disclosures concerning reimbursement of out-of-network services [Concerning Reimbursement of Basic Benefit Services]. An insurer must [is required to] make disclosures in all insurance policies, certificates, and outlines of coverage concerning the reimbursement of out-of-network [basic benefit] services as specified in this subsection.

(1) An insurer must [is required to] disclose how reimbursements of nonpreferred providers will be determined.

(2) Except in an exclusive provider benefit plan, if [if] an insurer reimburses nonpreferred providers based directly or indirectly upon data regarding usual, customary, or reasonable charges by providers, the insurer must [is required to] disclose the source of the data, how the data is used in determining reimbursements, and the existence of any reduction that will be applied in determining the reimbursement to nonpreferred providers.

(3) Except in an exclusive provider benefit plan, if [if] an insurer bases reimbursement of nonpreferred providers on any amount other than full billed charges, the insurer must [is required to]:

(A) disclose that the insurer’s reimbursement of claims for nonpreferred providers may be less than the billed charge for the service;

(B) disclose that the insurer may be liable to the nonpreferred provider for any amounts not paid by the insurer;

(C) provide a description of the methodology by which the reimbursement amount for nonpreferred providers is calculated; and

(D) provide to insureds notice of the insurer’s right to obtain the estimate of payment that will be made for any health care service or supply required by the Insurance Code §1456.007, including notice of any applicable procedures for obtaining the estimate [a method for insureds to obtain a real-time estimate of the amount of reimbursement that will be paid to a nonpreferred provider for a particular service].

[(q) Plan Designations. A preferred provider benefit plan that utilizes a preferred provider service delivery network that complies with the network adequacy requirements for hospitals under §3.3704 of this subchapter without reliance upon an access plan may be designated by the insurer as having an “Approved Hospital Care Network” (AHCN). If a preferred provider benefit plan utilizes a preferred provider service delivery network that does not comply with the network adequacy requirements for hospitals specified in §3.3704 of this subchapter, the insurer is required to disclose that the plan has a “Limited Hospital Care Network.”]
(4) on the cover page of any insurance policy, certificate of coverage, or outline of coverage utilizing the network; and

(2) on the cover page of any nonelectronic provider listing describing the network.

(4) Loss of Status as an AHCN. If a preferred provider benefit plan designated as an AHCN under subsection (p) of this section no longer complies with the network adequacy requirements for hospitals under §3.3704 of this subchapter and does not correct such noncompliant status within 30 days of becoming noncompliant, the insurer is required to:

(4) notify the department in writing concerning such change in status at Floorings Intake Division, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas, 78714-9104;

(2) cease marketing the plan as an AHCN; and

(3) inform all insureds of such change in status at the time of renewal.

§3.3706. Designation as a Preferred Provider; Decision to Withhold Designation, Termination of a Preferred Provider, Review of Process.

(a) Access to designation as a preferred provider [Designation as a Preferred Provider]. Physicians, practitioners, institutional providers, and health care providers other than physicians, practitioners, and institutional providers, if [such] other health care providers are included by an insurer as preferred providers, that are licensed to treat injuries or illnesses or to provide services covered by the preferred provider benefit plan and that comply with the terms and conditions established by the insurer for designation as preferred providers, are eligible to apply for and must be afforded a fair, reasonable and equitable opportunity to become preferred providers, subject to subsection (b) of this section.

(1) - (5) (No change.)

(b) Withholding preferred provider designation [Preferred Provider Designation]. An insurer may not unreasonably withhold designation as a preferred provider except that, unless otherwise limited by the Insurance Code or rule promulgated by the department, an insurer may reject an application from a physician or health care provider on the basis that the preferred provider benefit plan has sufficient qualified providers.

(1) (No change.)

(2) An insurer must [is required to] provide a reasonable review mechanism that incorporates, in an advisory role only, a review panel.

(A) (No change.)

(B) At least one of the three individuals on the advisory review panel must [is required to] be a physician or practitioner in the same or similar specialty as the physician or practitioner requesting review unless there is no physician or practitioner in the same or similar specialty contracting with the insurer [insured].

(C) - (E) (No change.)

(c) Credentialing of preferred providers [Preferred Providers]. Insurers must [are required to] have a documented process for selection and retention of preferred providers sufficient to ensure that preferred providers are adequately credentialled. At a minimum, an insurer's credentialing standards must [are required to] meet the standards promulgated by the National Committee for Quality Assurance (NCQA) [NCQA] or URAC to the extent that those standards do not conflict with other laws of this state. Insurers will [shall] be presumed to be in compliance with statutory and regulatory requirements regarding credentialing if they have received nonconditional accreditation or certification by the NCQA, the Joint Commission, [the American Accreditation HealthCare Commission, the] URAC, or the Accreditation Association for Ambulatory Health Care.

(d) Notice of termination of a preferred provider contract [Termination of a Preferred Provider Contract]. Before terminating a contract with a preferred provider, the insurer must [is required to] provide written notice of termination, which includes:

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

(e) Review of a decision to terminate [Decision to Terminate]. To obtain a standard review of an insurer's decision to terminate him or her, a physician or practitioner must:

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

(f) Completion of the review process [Review Process]. The review process, including the recommendation of the advisory review panel and the insurer's determination as required by subsection (b)(2)(E) of this section, must [is required to] be completed and the results provided to the physician or practitioner within 60 calendar days of the insurer's receipt of the request for review.

(g) Expedited review process [Review Process]. To obtain an expedited review of an insurer's decision to terminate him or her, a physician or practitioner must:

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

(h) Completion of the expedited review process [Expedited Review Process]. The expedited review process, including the recommendation of the advisory review panel and the insurer's determination as required by subsection (b)(2)(E) of this section, must [shall] be completed and the results provided to the physician or practitioner within 30 calendar days of the insurer's receipt of the request for review.

(i) Confidentiality of information concerning the insured [Information Concerning the Insured].

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

(j) Notice to insureds [Insureds].

(1) (No change.)

(2) If a physician or provider voluntarily terminates the physician's or provider's relationship with an insurer, the insurer must [is required to] provide assistance to the physician or provider in assuring that the notice requirements are met as required by §3.3703(a)(18) of this title [subchapter] (relating to Contracting Requirements).

(3) (No change.)

§3.3707. Waiver Due to Failure to Contract in Local Markets.

(a) In accordance with the Insurance Code §1301.0055(3), an insurer may apply for waiver from one or more of the network adequacy requirements in §3.3704 of this title [subchapter] (relating to Freedom of Choice; Availability of Preferred Providers). The commissioner may grant the waiver if there is good cause based upon one or more of the criteria specified in this subsection and may impose reasonable conditions on the grant of the [such] waiver. The commissioner may find good cause to grant the waiver if the insurer demonstrates that providers or physicians necessary for an adequate local market network:

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

(b) An insurer seeking a waiver under subsection (a) of this section must [is required to] file the request with the department at the Office of the Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas [TX] 78714-9104. The insurer is also

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required to submit a copy of the request to any provider or physician named in the request for waiver at the same time that the request is filed with the department, but is permitted to redact information from the copy where provision of the information to the provider or physician would violate state or federal law. The insurer may use any reasonable means to submit the copy of the request to the provider or physician and must [is required to] maintain proof of the [such] submission.

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

(e) An insurer may [is required to] apply for renewal of a waiver described in subsection (a) of this section annually. Application for renewal of a waiver must be filed in the manner described in subsection (b) of this section at least 30 days prior to the anniversary of the department's grant of waiver. A waiver granted by the department will remain in effect unless the insurer fails to timely file an annual application for renewal of the waiver or the department denies the application for renewal. [and at the same time the insurer files the annual network adequacy report required under §3.3709 of this subchapter (relating to Annual Network Adequacy Report; Access Plan).]

(f) A waiver will expire one year after the date the department granted it if an insurer fails to timely request a renewal under subsection (e) of this section or if the department denies the insurer's request for renewal. [An insurer that is granted a waiver under this section concerning network adequacy requirements for hospital based services is required to comply with §3.3705(p) of this subchapter (relating to Nature of Communications with Insureds; Readability, Mandatory Disclosure Requirements, and Plan Designations. The insurer is required to designate such plan as having a "Limited Hospital Care Network".)]

(g) The Insurance Code §1301.0055(3) and this section do not apply to an exclusive provider benefit plan.

§3.3708. Payment of Certain Basic Benefit Claims and Related Disclosures.

(a) An insurer must comply with the requirements of subsections (b) and (c) [(e)] of this section when a preferred provider is not reasonably available to an insured and services are instead rendered by a nonpreferred provider, including circumstances:

(1) requiring emergency care;

(2) when no preferred provider is reasonably available within the designated service area for which the policy was issued; and

(3) when a nonpreferred provider's services were pre-approved or preauthorized based upon the unavailability of a preferred provider.

(b) When services are rendered to an insured by a nonpreferred provider because no preferred provider is reasonably available to the insured under subsection (a) of this section, the insurer must [is required to]:

(1) pay the [such] claim at the preferred benefit coinsurance level; and

(2) in addition to any amounts that would have been credited had the provider been a preferred provider, credit any out-of-pocket amounts shown by the insurer to have been actually paid to the nonpreferred provider for covered services in excess of the allowed amount toward the insured's deductible and annual out-of-pocket maximum applicable to in-network services.

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

(e) This section does not apply to an exclusive provider benefit plan. [When services are rendered to an insured by a nonpreferred provider because no preferred provider is reasonably available to the insured under subsection (a) of this section, the insurer is required to include a notice on each explanation of benefits that the insurer has the right to request information concerning negotiated rates for comparison purposes. Upon the request of an insured, the insurer must furnish the median per-service amount the insurer has negotiated with preferred providers for the service furnished, excluding any cost sharing imposed with respect to the insured, or notification that the claim was paid at this amount.]


(a) Network adequacy report required [Adequacy Report Required]. An insurer must [is required to] file a network adequacy report with the department on or before April 1 [April 1st] of each year and prior to marketing any plan in a new service area.

(b) General content of report [Content of Report]. The report required in subsection (a) of this section must specify:

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

(3) whether the preferred provider service delivery network supporting each plan is adequate under the standards set forth in §3.3704 of this title [subchapter] (relating to Freedom of Choice; Availability of Preferred Providers).

(c) Additional content applicable only to annual reports [Content Applicable Only to Annual Reports]. As a part of the annual report on network adequacy, each insurer must [is required to] provide additional demographic data as specified in paragraphs (1) - (6) of this subsection for the previous calendar year. The data must be reported on the basis of each of the geographic regions specified in §3.3711 of this title [subchapter] (relating to Geographic Regions). If none of the insurer's preferred provider benefit plans includes a service area that is located within a particular geographic region, the insurer must [is required to] specify in the report that there is no applicable data for that region. The report must include the number of:

(1) claims for out-of-network [basic] benefits, excluding claims paid at the preferred benefit coinsurance level;

(2) claims for out-of-network [basic] benefits that were paid at the preferred benefit coinsurance level;

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

(d) Additional content applicable if inadequate networks are utilized [Content Applicable if Inadequate Networks Are Utilized]. As a part of the annual report on network adequacy, an insurer must [is required to] submit a local market access plan as specified in subsection (e) of this section if any of the insurer's preferred provider benefit plans utilize a preferred provider service delivery network that does not comply with the network adequacy requirements specified in §3.3704 of this title [subchapter].

(e) Content of local market access plan [Local Market Access Plan].

[(1)] A local market access plan required under subsection (d) of this section must specify for each service area that does not meet the network adequacy requirements:

(1) [(A)] the geographic area within the service area in which a sufficient number of preferred providers are not available as specified in §3.3704 of this title [subchapter], including a specification of the class of provider that is not sufficiently available;

(2) [(B)] a map, with key and scale, that identifies the geographic areas within the service area in which the [such] health care services and/or physicians and providers are not available;
(3) [(C)] the reason(s) that the preferred provider network does not meet the adequacy requirements specified in §3.3704 of this title [subchapter];

(4) [(D)] procedures that the insurer will utilize to assist insureds to obtain medically necessary services when a preferred provider is reasonably available; and

(5) [(E)] procedures detailing how out-of-network [base] benefit claims will be handled when no preferred or otherwise contracted provider is available, including procedures for compliance with §3.3708 of this title [subchapter] (relating to Payment of Certain Basic Benefit Claims and Related Disclosures; [Waiver]) and §3.3725 of this title (relating to Payment of Certain Out-of-Network Claims).

[2] The department may request additional information necessary to assess the local market access plan.

(f) Procedures to supplement local market access plan [Supplement Local Market Access Plan]. An insurer must [is required to] establish and implement documented procedures as specified in this subsection for use in all service areas for which a local market access plan is submitted as required in subsection (a) [(d)] of this section.

(1) The insurer must utilize a documented procedure to:

(A) identify requests for preauthorization of services for insureds that are likely to require, directly or indirectly, the rendition of services by physicians or providers that do not have a contract with the insurer;

(B) furnish to the [such] insureds, prior to the [such] services being rendered, an estimate of the amount the insurer will pay the physician or provider; and

(C) except in the case of an exclusive provider benefit plan, notify the insured that the insured may be liable for any amounts charged by the physician or provider that are not paid in full by the insurer.

(2) The insurer must utilize a documented procedure to:

(A) identify claims filed by nonpreferred providers in instances in which no preferred provider was reasonably available to the insured; and

(B) make initial and, if required, subsequent payment of the [such] claims in the manner required by this subchapter [at the preferred benefit coinsurance level].

(g) Negotiation procedure permitted in access plan [Procedure Permitted in Access Plan]. A local market access plan may include a process for negotiating with a nonpreferred provider prior to services being rendered, when feasible.

(h) Filing the report [Report]. The annual report required under this section must be submitted electronically in a format acceptable to the department. Acceptable formats include Microsoft Word and Excel documents. The report must be submitted to the following email [e-mail] address: LifeHealth@tdi.state.tx.us [hwen@tdi.state.tx.us].

(i) Access plan required of network adequacy status changes [Plan Required if Network Adequacy Status Changes]. If the status of a [preferred provider service delivery] network utilized in any preferred provider benefit plan changes so [such] that the plan no longer complies with the network adequacy requirements specified in §3.3704 of this title [subchapter] for a specific service area, the insurer must [is required to] establish an access plan within 30 days of the date on which the network becomes non-compliant. The [Such] access plan must contain all of the information specified in subsection (b) [(o)] of this section and must be made available to the department upon request.

§3.3710. Failure to Provide an Adequate Network.

(a) If the commissioner determines, after notice and opportunity for hearing, that the insurer's [preferred provider service delivery] network and any access plan supporting the [such] network are inadequate to ensure that preferred provider benefits are reasonably available to all insureds or are inadequate to ensure that all medical and health care services and items covered pursuant to the health insurance policy are provided in a manner ensuring availability of and accessibility to adequate personnel, specialty care, and facilities, the commissioner may order one or more of the following sanctions pursuant to the authority of the commissioner in the Insurance Code Chapters 82 and [Chapter] 83 to issue cease and desist orders:

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

(b) (No change.)

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

Filed with the Office of the Secretary of State on June 18, 2012.

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Sara Waht
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: July 29, 2012
For further information, please call: (512) 463-6327

DIVISION 2. EXCLUSIVE PROVIDER BENEFIT PLAN REQUIREMENTS

28 TAC §§3.3720 - 3.3725

STATUTORY AUTHORITY. The new sections are proposed under the Insurance Code §§1301.003, 1301.0042, 1301.007, and 36.001. The Insurance Code §1301.003 provides that an exclusive provider benefit plan that meets the requirements of Chapter 1301, relating to Preferred Provider Benefit Plans, is permitted. The Insurance Code §1301.0042 provides that, except for dental care benefits, a provision of the Insurance Code or other insurance law that applies to a preferred provider benefit plan also applies to an exclusive provider benefit plan unless the provision is determined to be inconsistent with the function and purpose of an exclusive provider benefit plan. The Insurance Code §1301.0042 also authorizes the commissioner to determine whether a provision is inconsistent with the function and purpose of an exclusive provider benefit plan.

The Insurance Code §1301.007 authorizes the commissioner to adopt rules to implement Chapter 1301, relating to Preferred Provider Benefit Plans, and to ensure reasonable accessibility and availability of preferred provider services to residents of this state.

The Insurance Code §36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §§401.054, 541.003, 541.051, 751.303, 1251.006, 1301.001, 1301.003, 1301.0041, 1301.0042, 1301.0045, 1301.005, 1301.0051, 1301.0052, 1301.0053, 1301.0054, 1301.0055, 1301.0056,
§3.3720. Exclusive Provider Benefit Plan Requirements.

The provisions of this division apply only to exclusive provider benefit plans offered pursuant to the Insurance Code Chapter 1301 in commercial markets.

§3.3721. Exclusive Provider Benefit Plan Network Approval Required.

An insurer may not offer, deliver, or issue for delivery an exclusive provider benefit plan in this state unless the commissioner has completed a qualifying examination to determine compliance with the Insurance Code Chapter 1301 and this subchapter and has approved the insurer's exclusive provider network in the service area.


(a) Where to file application. An insurer that seeks to offer an exclusive provider benefit plan must file an application for approval with the Texas Department of Insurance at the following address: Texas Department of Insurance, Mail Code 106-1A, P.O. Box 149104, Austin, Texas 78714-9104. A form titled Application for Approval of Exclusive Provider Benefit Plan is available on the department's website at www.tdi.texas.gov/forms. An insurer may use this form to prepare the application.

(b) Filing requirements.

(1) An applicant must provide the department with a complete application that includes the elements in the order set forth in subsection (c) of this section.

(2) All pages must be clearly legible and numbered.

(3) If the application is revised or supplemented during the review process, the applicant must submit a transmittal letter describing the revision or supplement plus the specified revision or supplement.

(4) If a page is to be revised, a complete new page must be submitted with the changed item or information clearly marked.

(c) Contents of application. A complete application includes the elements specified in paragraphs (1) - (12) of this subsection.

(1) The applicant must provide a statement that the filing is:

(A) an application for approval; or

(B) a modification to an approved application.

(2) The applicant must provide organizational information for the applicant, including:

(A) the full name of the applicant;

(B) the applicant's Texas Department of Insurance license or certificate number;

(C) the applicant's home office address, including city, state, and ZIP code; and

(D) the applicant's telephone number.

(3) The applicant must provide the name and telephone number of an individual to be the contact person who will facilitate requests from the department regarding the application.

(4) The applicant must provide an attestation signed by the applicant's corporate president, corporate secretary, or the president's or secretary's authorized representative that:

(A) the person has read the application, is familiar with its contents, and asserts that all of the information submitted in the application, including the attachments, is true and complete; and

(B) the network is adequate for the services to be provided under the exclusive provider benefit plan.

(5) The applicant must provide a description and a map of the service area, with key and scale, identifying the area to be served by geographic region(s), county(ies), or ZIP code(s). If the map is in color, the original and all copies must also be in color.

(6) The applicant must provide a list of all plan documents and each document's associated form filing ID number or the form number of each plan document that is pending the department's approval or review.

(7) The applicant must provide the form(s) of physician contract(s) and provider contract(s) that include the provisions required in §3.3703 of this title (relating to Contracting Requirements) or an attestation by the insurer's corporate president, corporate secretary, or the president's or secretary's authorized representative that the physician and provider contracts applicable to services provided under the exclusive provider benefit plan comply with the requirements of the Insurance Code Chapter 1301 and this subchapter.

(8) The applicant must provide a description of the quality improvement program and work plan that includes a process for medical peer review required by the Insurance Code §1301.0051 and that explains arrangements for sharing pertinent medical records between preferred providers and for ensuring the records' confidentiality.

(9) The applicant must provide network configuration information, including:

(A) maps for each specialty demonstrating the location and distribution of the physician and provider network within the proposed service area by geographic region(s), county(ies) or ZIP code(s); and

(B) lists of:

(i) physicians and individual providers who are preferred providers, including license type and specialization and an indication of whether they are accepting new patients; and

(ii) institutional providers that are preferred providers.

(10) The applicant must provide documentation demonstrating that the applicant will pay for emergency care services performed by nonpreferred physicians or providers at the negotiated or usual and customary rate as required under the Insurance Code §1301.0053 and that the policy contains, without regard to whether the physician or provider furnishing the services has a contractual or other arrangement to provide items or services to insureds, the provisions and procedures for coverage of emergency care services as set forth in §3.3725 of this title (relating to Payment of Certain Out-of-Network Claims).

(11) The applicant must provide documentation demonstrating that the insurer maintains a complaint system that provides reasonable procedures to resolve a written complaint initiated by a complainant.
§3.3723. Examinations.

(a) The commissioner may conduct an examination relating to an exclusive provider benefit plan as often as the commissioner considers necessary, but no less than once every five years.

(b) On-site financial, market conduct, complaint, or quality of care exams will be conducted pursuant to the Insurance Code Chapter 401, Subchapter B; the Insurance Code Chapter 751; and §7.83 of this title (relating to Appeal of Examination Reports).

(c) An insurer must make its books and records relating to its operations available to the department to facilitate an examination.

(d) On request of the commissioner, an insurer must provide to the commissioner a copy of any contract, agreement, or other arrangement between the insurer and a physician or provider. Documentation provided to the commissioner under this subsection will be maintained as confidential as specified in the Insurance Code §1301.0056.

(e) The commissioner may examine and use the records of an insurer, including records of a quality of care program and records of a medical peer review committee, as necessary to implement the purposes of this subchapter, including commencement and prosecution of an enforcement action under the Insurance Code Title 2, Subtitle B, and §3.3710 of this title (relating to Failure to Provide an Adequate Network). Information obtained under this subsection will be maintained as confidential as specified in the Insurance Code §1301.0056. In this subsection, "medical peer review committee" has the meaning assigned by the Occupations Code §151.002.

(f) The following documents must be available for review at the physical address designated by the insurer pursuant to §3.3722(c)(12) of this title (relating to Application for Exclusive Provider Benefit Plan Approval; Qualifying Examination; Network Modifications):

(1) quality improvement--program description, work plans, program evaluations, and committee and subcommittee meeting minutes;

(2) utilization management--program description, policies and procedures, criteria used to determine medical necessity, and examples of adverse determination letters, adverse determination logs, and independent review organization logs;

(3) network configuration information demonstrating adequacy of the exclusive provider network, as outlined in subsection (c)(9) of this section, and all executed physician and provider contracts applicable to the network, which may be satisfied by contract forms and executed signature pages;

(4) credentialing files;

(5) all written materials to be presented to prospective insureds that discuss the exclusive provider network available to insureds under the plan and how preferred and nonpreferred physicians or providers will be paid under the plan;

(6) the policy and certificate of insurance; and

(7) a complaint log that is categorized and completed in accordance with §21.2504 of this title (relating to Complaint Record; Required Elements; Explanation and Instructions).

(e) Network modifications.

(1) An insurer must file an application for approval with the department before the insurer may make changes to network configuration that impact the adequacy of the network, expand an existing service area, reduce an existing service area, or add a new service area.

(2) Pursuant to paragraph (1) of this subsection, if an insurer submits any of the following items to the department and then replaces or materially changes them, the insurer must submit the new item or any amendments to an existing item along with an indication of the changes:

(A) descriptions and maps of the service area, as required by subsection (c)(5) of this section;

(B) forms of contracts, as described in subsection (c) of this section; or

(C) network configuration information, as required by subsection (c)(9) of this section.

(3) Before the department grants approval of a service area expansion or reduction application, the insurer must be in compliance with the requirements of §3.3724 of this title in the existing service areas and in the proposed service areas.

(4) An insurer must file with the department any information other than the information described in paragraph (2) of this subsection that amends, supplements, or replaces the items required under subsection (c) of this section no later than 30 days after the implementation of any change.

§3.3724. Quality Improvement Program.

(a) An insurer must develop and maintain an ongoing quality improvement (QI) program designed to objectively and systematically monitor and evaluate the quality and appropriateness of care and services provided within an exclusive provider benefit plan and to pursue opportunities for improvement. The QI program must be continuous and comprehensive, addressing both the quality of clinical care and the
quality of services. The insurer must dedicate adequate resources, like personnel and information systems, to the QI program.

(1) Written description. The QI program must include a written description of the QI program that outlines program organizational structure, functional responsibilities, and meeting frequency.

(2) Work plan. The QI program must include an annual QI work plan designed to reflect the type of services and the population served by the exclusive provider benefit plan in terms of age groups, disease categories, and special risk status. The work plan must:

(A) include objective and measurable goals, planned activities to accomplish the goals, time frames for implementation, responsible individuals, and evaluation methodology; and

(B) address each program area, including:

(i) network adequacy, which includes availability and accessibility of care, including assessment of open and closed physician and individual provider panels;

(ii) continuity of medical and health care and related services;

(iii) clinical studies;

(iv) the adoption and periodic updating of clinical practice guidelines or clinical care standards that:

(I) are approved by participating physicians and individual providers;

(II) are communicated to physicians and individual providers; and

(III) include preventive health services;

(v) insured, physician, and individual provider satisfaction;

(vi) the complaint process, complaint data, and identification and removal of barriers that may impede insureds, physicians, and providers from effectively making complaints against the insurer;

(vii) preventive health care through health promotion and outreach activities;

(viii) claims payment processes;

(ix) contract monitoring, including oversight and compliance with filing requirements;

(x) utilization review processes;

(xi) credentialing;

(xii) insured services; and

(xiii) pharmacy services, including drug utilization.

(3) Evaluation. The QI program must include an annual written report on the QI program, which includes completed activities, trending of clinical and service goals, analysis of program performance, and conclusions.

(4) Credentialing. An insurer must implement a documented process for selection and retention of contracted preferred providers that complies with §3.3706(c) of this title (relating to Designation as a Preferred Provider, Decision to Withhold Designation, Termination of a Preferred Provider, Review of Process).

(5) Peer review. The QI program must provide for a peer review procedure for physicians and individual providers, as required in the Medical Practice Act, Occupations Code Chapters 151 - 164. The insurer must designate a credentialing committee that uses a peer review process to make recommendations regarding credentialing decisions.

(b) The insurer's governing body is ultimately responsible for the QI program.

(1) The governing body must appoint a quality improvement committee (QIC) that:

(A) must include practicing physicians and individual providers;

(B) may include one or more insured(s) from throughout the exclusive provider benefit plan's service area; and

(C) must ensure that any insured appointed to the QIC is not an employee of the insurer.

(2) The governing body must approve the QI program.

(3) The governing body must approve an annual QI plan.

(4) The governing body must meet no less than annually to receive and review reports of the QIC or its subcommittees and take action when appropriate.

(5) The governing body must review the annual written report on the QI program.

(c) The QIC must evaluate the overall effectiveness of the QI program.

(1) The QIC may delegate QI activities to other committees that may, if applicable, include practicing physicians, individual providers, and insureds from the service area.

(A) All committees must collaborate and coordinate efforts to improve the quality, availability, and accessibility of health care services.

(B) All committees must meet regularly and report the findings of each meeting, including any recommendations, in writing to the QIC.

(C) If the QIC delegates any QI activity to any subcommittee, then the QIC must establish a method to oversee each subcommittee.

(2) The QIC must use multidisciplinary teams, when indicated, to accomplish QI program goals.

(d) In reviewing an insurer's quality improvement program, the department will presume that the insurer is in compliance with statutory and regulatory requirements regarding the insurer's quality improvement program if the insurer has received nonconditional accreditation or certification specific to quality improvement by the National Committee for Quality Assurance, the Joint Commission, URAC, or the Accreditation Association for Ambulatory Health Care. However, if the department determines that an accreditation or certification program does not adequately address a material Texas statutory or regulatory requirement, the department will not presume the insurer to be in compliance with that requirement.

§3.3725. Payment of Certain Out-of-Network Claims.

(a) If an insured cannot reasonably reach a preferred provider, the insurer must fully reimburse a nonpreferred provider for the following emergency care services at the usual and customary rate or at a rate agreed to by the insurer and the nonpreferred provider until the insured can reasonably be expected to transfer to a preferred provider:

(1) a medical screening examination or other evaluation required by state or federal law to be provided in a hospital emergency facility of a hospital, freestanding emergency medical care facility, or
comparable facility that is necessary to determine whether a medical emergency condition exists;

(2) necessary emergency care services, including the treatment and stabilization of an emergency medical condition; and

(3) following treatment or stabilization of an emergency medical condition, services originating in a hospital emergency facility or freestanding emergency medical care facility or comparable emergency facility.

(b) If medically necessary covered services, excluding emergency care, are not available through a preferred provider upon the request of a preferred provider, the insurer must:

(1) approve a referral to a nonpreferred provider within the time appropriate to the circumstances relating to the delivery of the services and the condition of the patient, but in no event to exceed five business days after receipt of reasonably requested documentation; and

(2) provide for a review by a health care provider with expertise in the same specialty as or a specialty similar to the type of health care provider to whom a referral is requested under paragraph (1) of this subsection before the insurer may deny the referral.

(c) An insurer may facilitate an insured’s selection of a nonpreferred provider when medically necessary covered services, excluding emergency care, are not available through a preferred provider and an insured has received a referral from a preferred provider.

(1) If an insurer chooses to facilitate an insured’s selection of a nonpreferred provider pursuant to this subsection, the insurer must offer an insured a list of at least three nonpreferred providers with expertise in the necessary specialty who are reasonably available considering the medical condition and location of the insured.

(2) If the insured selects a nonpreferred provider from the list provided by the insurer, subsections (d) - (f) of this section are applicable.

(3) If the insured selects a nonpreferred provider that is not included in the list provided by the insurer, then:

(A) Subsections (d) - (f) of this section are not applicable; and

(B) Notwithstanding §3.3708(e) of this title (relating to Payment of Certain Basic Benefit Claims and Related Disclosures), the insurer must pay the claim in accordance with §3.3708 of this title.

(d) An insurer reimbursing a nonpreferred provider under subsections (a), (b), or (c)(2) of this section must ensure that the insurer is held harmless for any amounts beyond the copayment, deductible, and coinsurance percentage that the insured would have paid had the insured received services from a preferred provider.

(e) Upon determining that a claim from a nonpreferred provider under subsection (a), (b), or (c)(2) of this section is payable, an insurer must issue payment to the nonpreferred provider at the usual and customary rate or at a rate agreed to by the insurer and the nonpreferred provider. When issuing payment, the insurer must provide an explanation of benefits to the insured along with a request that the insured notify the insurer if the nonpreferred provider bills the insured for amounts beyond the amount paid by the insurer.

(1) The insurer must resolve any amounts that the nonpreferred provider bills the insured beyond the amount paid by the insurer in a manner consistent with subsection (d) of this section.

(2) The insurer may require in its contract with an insured that, if a claim is eligible for mediation under the Insurance Code Chapter 1467 and Chapter 21, Subchapter PP, of this title (relating to Out-of-Network Claim Dispute Resolution), the insured must pursue mediation.

(A) The insurer must notify the insured when mediation is available under the Insurance Code Chapter 1467 and Chapter 21, Subchapter PP, of this title and inform the insured of how to request mediation.

(B) For purposes of determining eligibility for mediation under the Insurance Code Chapter 1467 and Chapter 21, Subchapter PP, of this title the entire unpaid amount of the amount the nonpreferred provider bills should be taken into consideration, less any applicable copayment, deductible, and coinsurance.

(C) If the amount of a claim is changed as a result of mediation required by the insurer, the insurer's payment must be based on the amount that results from the mediation process.

(f) Any methodology utilized by an insurer to calculate reimbursements of nonpreferred providers for services that are covered under the health insurance policy must comply with the following:

(1) if based upon usual, reasonable, or customary charges, the methodology must be based on generally accepted industry standards and practices for determining the customary billed charge for a service and fairly and accurately reflect market rates, including geographic differences in costs;

(2) if based on claims data, the methodology must be based upon sufficient data to constitute a representative and statistically valid sample;

(3) any claims data underlying the calculation must be updated no less than once per year and not include data that is more than three years old; and

(4) the methodology must be consistent with nationally recognized and generally accepted bundling edits and logic.

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

Filed with the Office of the Secretary of State on June 18, 2012.

TRD-201203185
Sara Wait
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: July 29, 2012
For further information, please call: (512) 463-6327

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION
SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

28 TAC §7.18
The Texas Department of Insurance proposes amendments to 28 TAC §7.18, concerning Statements of Statutory Accounting Principles (SSAPs). SSAPs provide guidance to insurers and health maintenance organizations (HMOs), including accountants employed or retained by these entities, on how to properly record business transactions for the purpose of accurate statutory reporting. These insurers and HMOs are referred to collectively as “carriers” in this proposal.
SSAPs provide a nationwide standard method of accounting that state insurance regulators require most carriers to use for statutory financial reporting guidance. Because they create a nationwide standard, SSAPs provide a more consistent reporting of financial information from carriers. SSAPs provide the source of statutory accounting principles for the department when analyzing financial reports and for conducting statutory examinations and rehabilitations of carriers licensed in Texas, except where otherwise provided by state law. However, SSAPs do not preempt individual state legislative or regulatory authority.

The National Association of Insurance Commissioners (NAIC) adopts SSAPs through its maintenance of statutory accounting principles process. Under this process, the NAIC proposes and develops new SSAPs through a series of open meetings in which the public has the opportunity to comment. SSAPs adopted by the NAIC are incorporated into The Accounting Practices and Procedures Manual (Manual), a comprehensive guide to statutory accounting principles published and issued by the NAIC. The SSAPs that have been adopted by the NAIC are incorporated into Texas regulations through adoption by reference in §7.18.

The proposed amendments are necessary to adopt by reference the March 2012 version of the Manual adopted by the NAIC. The March 2012 version of the Manual substantively revises the March 2010 version of the Manual by: (i) adding SSAP No. 94R, which the NAIC finalized on December 7, 2011; (ii) adding SSAP No. 101, which the NAIC finalized on August 30, 2011; and (iii) making five substantive placement revisions, which the NAIC finalized on August 30, 2011.

SSAP No. 94R revises SSAP No. 94 to allow entities to treat non-transferable state tax credits as admitted assets if specific criteria are met. The substantive revisions in SSAP No. 94R are effective for reporting periods ending on or after December 31, 2011.

SSAP No. 101 replaces SSAP No. 10R and SSAP No. 10 and provides revised statutory accounting principles for current and deferred federal and foreign income taxes and current state income taxes. SSAP No. 101 is effective for reporting periods ending on or after January 1, 2012.

Proposed amendments to §7.18(a) and (b) update the reference to the Manual to refer to the March 2012 version of the Manual. A second proposed amendment in subsection (a) corrects a punctuation error in the current rule text. Additionally, the proposed amendments to subsections (b) and (c) delete references to various SSAPs and to Issue Paper No. 99 because these SSAPs and issue paper are now included in the adopted March 2012 version of the Manual. Further, the proposed amendments to §7.18(c) redesignate the subdivisions of subsection (c) to reflect the deletion of paragraph (1). Finally, the proposed amendments to §7.18(c) reflect that the NAIC moved guidance in SSAP No. 96 to SSAP No. 25, which is located in Appendix H of the Manual. The NAIC did this through adoption of a placement revision (Reference No. 2011-13).

The proposed amendments to §7.18(e) reflect structural reorganization within the department; they change "Senior Associate Commissioner" to "Deputy Commissioner" and change "Financial Program" to "Financial Regulation Division."

The proposal also incorporates nonsubstantive editorial changes to conform to current agency style.

**FISCAL NOTE.** Danny Saenz, deputy commissioner, Financial Regulation Division, has determined that, for each year of the first five years the amended section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section, and there will be no effect on local employment or the local economy.

**PUBLIC BENEFIT/COST NOTE.** Mr. Saenz also has determined that for each year of the first five years the amended section is in effect, the public benefit will be the adoption of an updated Manual that will enable the department to continue efficient financial solvency regulation of insurance in general and the decrease in costs to carriers required to comply with accounting requirements in multiple states. In particular, adoption of the March 2012 version of the Manual will enable the department to continue efficient and effective utilization of existing resources in the analysis and examination of the financial condition of carriers to better ensure financial solvency. Additionally, the adoption and use of the updated Manual will continue to support a more consistent regulatory environment and to provide a central source for accounting guidance. The department does not anticipate that any of the proposed amendments, including the proposed adoption by reference of the 2012 Manual, will result in additional costs to those costs already required of carriers, regardless of size, under the existing rules.

The proposed amendments to §7.18(b) adopt by reference two substantively revised SSAPs: SSAP No. 94R, which allows non-transferable state tax credits to be admitted assets if specific criteria are met; and SSAP No. 101, which provides revised statutory accounting principles for current and deferred federal and foreign income taxes and current state income taxes. None of these substantively revised SSAPs will result in additional costs to those costs already required of carriers, regardless of size, under the existing rules.

Additionally, the proposed amendments to §7.18(b) adopt by reference five substantive placement revisions to the March 2010 version of the Manual that the NAIC adopted on August 30, 2011. These placement revisions are considered substantive only because SSAPs are nullified. However, these placement revisions do not make any changes to the existing guidance. None of these placement revisions will result in additional costs to those costs already required of carriers, regardless of size, under the existing rules.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.** In accordance with the Government Code §2006.002, the department has determined that the proposed amendments will not result in any additional costs to those costs that are required of small and micro business carriers under the existing rules for the reasons specified in the Public Benefit/Cost Note part of this proposal. Nevertheless, the rule exempts certain carriers that have historically accounted for their business on a cash basis and have historically posed relatively insubstantial insolvency-related risk to consumers, other carriers, and the state's general economic welfare from compliance with the Manual. Section 7.18(d) exempts any farm mutual insurance company, statewide mutual assessment company, local mutual aid association, or mutual burial association with less than $6 million in annual direct written premiums from compliance with the Manual. Because of the types or methods of operations of these types of carriers, they are more likely to be small or micro business carriers.

Under the Government Code §2006.002(c), before adopting a rule that may have an adverse economic effect on small or mi-
cro 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. The department has determined that the routine costs to comply with this proposal, i.e., compliance with the Manual in financial filings, will not have an adverse economic effect on small or micro business carriers. Therefore, the department is not required to consider alternative methods of achieving the purpose of these requirements in the proposed rule as required by the Government Code §2006.002(c).

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 July 30, 2012. All comments should be submitted to Sara Waltt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be simultaneously submitted to Danny Saenz, Deputy Commissioner, Financial Regulation Division, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing on the proposal 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 32, 401, 404, 421, 425, 426, 441, 802, 823, 841, 843, 861, and 862, and §36.001. Section 401.051 and §401.056 mandate that the department examine the financial condition of each carrier organized under the laws of Texas or authorized to transact the business of insurance in Texas and adopt by rule procedures for the filing and adoption of examination reports. Section 404.005(a)(2) requires the commissioner to establish standards for evaluating the financial condition of an insurer. Section 421.001(c) requires the commissioner to adopt each current formula recommended by the NAIC for establishing reserves for each line of insurance. Section 425.162 authorizes the commissioner to adopt rules, minimum standards, or limitations that are fair and reasonable as appropriate to supplement and implement the Insurance Code Chapter 425, Subchapter C. Section 426.002 provides that reserves required by §426.001 must be computed in accordance with any rules adopted by the commissioner to adequately protect insureds, secure the solvency of the workers’ compensation insurance company, and prevent unreasonably large reserves. Section 441.005 authorizes the commissioner to adopt reasonable rules as necessary to implement and supplement Chapter 441 of the Insurance Code (Supervision and Conservatorship). Section 32.041 requires the department to furnish to the companies the required financial statement forms. Section 802.001 authorizes the commissioner to change the form of any annual statement required to be filed by any kind of insurance company, as necessary, to obtain an accurate indication of the company’s condition and method of transacting business and. Section 823.012 authorizes the commissioner to issue rules and orders necessary to implement the provisions of Chapter 823 of the Insurance Code (Life Insurance Company Systems). Section 843.151 authorizes the commissioner to promulgate rules that are necessary and proper to implement the provisions of Chapter 843 of the Insurance Code (Health Maintenance Organizations). Section 843.155 requires HMOs to file annual reports with the commissioner, which include a financial statement of the HMO, certified by an independent public accountant. Sections 841.004(b), 861.255(b), and 862.001(c) authorize the commissioner to adopt rules defining electronic machines and systems, office equipment, furniture, machines and labor saving devices, and the maximum period for which each such class may be amortized. Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code Chapters 32, 401, 404, 421, 425, 426, 441, 802, 823, 841, 843, 861, and 862.


(a) The purpose of this section is to adopt statutory accounting principles, which will provide insurers and health maintenance organizations, including accountants employed or retained by these entities, guidance as to how to properly record business transactions for the purpose of accurate statutory reporting. The March 2012 [2010] version of the Accounting Practices and Procedures Manual (Manual) published by the National Association of Insurance Commissioners (NAIC), with the exceptions and modifications set forth in subsections (c) and (d) of this section, will be utilized as the guideline for statutory accounting principles in Texas to the extent the Manual does not conflict with provisions of the Insurance Code or rules of the department. The commissioner [Commissioner] reserves all authority and discretion to resolve any accounting issues in Texas. When making a determination on the proper accounting treatment for an insurance or health plan transaction, the commissioner [Commissioner shall] refer to the sources in paragraphs (1) - (6) of this subsection in the respective order of priority listed. The sources in paragraphs (1) - (3) of this subsection preempt any contrary provisions in the Manual. The department rules that preempt any contrary provisions in the Manual, include, but are not limited to: §83.1501 - 3.1505, 3.1601 - 3.1608, 3.4505(f), 3.6101, 3.6102, 3.7001 - 3.7009, 3.9101 - 3.9106, 3.9401 - 3.9404, 7.7, 7.85, and 11.803 of this title (relating to Annuity Mortality Tables; Actuarial Opinion and Memorandum Regulation; General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves; Policy Reserves; Claims Reserves; Minimum Reserve Standards for Individual and Group Accident and Health Insurance; the 2001 CSO Mortality Table; Preferred Mortality Tables; Subordinated Indebtedness, Surplus Debentures, Surplus Notes, Premium Income Notes, Bonds, or Debentures, and Other Contingent Evidences of Indebtedness; Audited Financial Reports; and Investments, Loans, and Other Assets).

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

(3) directives, instructions, and orders of the commissioner [Commissioner];

(4) - (6) (No change.)

(b) The commissioner [Commissioner] adopts by reference the March 2012 [2010] version of the Manual, with the exceptions and modifications set forth in subsections (c) and (d) of this section, as the source of accounting principles for the department when analyzing financial reports and for conducting statutory examinations.
and rehabilitations of insurers and health maintenance organizations licensed in Texas, except where otherwise provided by law. [Except as provided in subsection (c)(1)(A) of this section concerning Statement of Statutory Accounting Principles (SSAP) Nos. 5R and 35R.] This [this] Manual that is adopted by reference with the exceptions and modifications specified in subsections (c) and (d) of this section will [shall] be applied to examinations conducted as of December 31, 2011 [2010], and thereafter, and also must [shall] be used to prepare all financial statements filed with the department for reporting periods beginning on or after December 31, 2011 [2010].

(c) The commissioner [Commissioner] adopts the following exceptions and modifications to the Manual: [specified in paragraphs (1) and (2) of this subsection. Except as provided in paragraph (1)(A) of this subsection concerning SSAP Nos. 5R and 35R, these exceptions and modifications shall be applied to examinations conducted as of December 31, 2010, and thereafter, and also shall be used to prepare all financial statements filed with the department for reporting periods beginning on or after December 31, 2010.]

[(1) In addition to the statements of statutory accounting principles in the Manual, the following modifications are adopted by reference:]

[(A) Statements of Statutory Accounting Principles (SSAP) Nos. 5R, adopted by the NAIC in calendar year 2010, and effective December 31, 2011; 35R, adopted by the NAIC in calendar year 2010, and effective January 1, 2011; and 91R, adopted by the NAIC in calendar year 2010 and effective December 31, 2010. SSAP Nos. 5R and 35R shall be applied to examinations conducted as of December 31, 2011, and January 1, 2011, respectively, and thereafter, and also shall be used to prepare all financial statements filed with the department for reporting periods beginning on or after December 31, 2011, and on or after January 1, 2011, respectively.]

[(B) Nonsubstantive modifications to SSAP Nos. 43R, 90, 100, and 10R, and Issue Paper No. 99 made by the NAIC in calendar year 2010, as follows:]

[(i) Ref. No. 2010-07: ASU 2010-09, Subsequent Events - Amendments to Certain Recognition and Disclosure Requirements;]

[(ii) Ref. No. 2010-01: AVR and IMR Guidance within SSAP No. 43R and SSAP No. 75;]

[(iii) Ref. No. 2010-02: Clarification of SSAP No. 90 - Accounting for the Impairment or Disposal of Real Estate Investments, paragraph 61;]

[(iv) Ref. No. 2010-05: ASU 2010-06, Fair Value Measurements and Disclosures - Improving Disclosures about Fair Value Measurements;]

[(v) Ref. No. 2010-09: Income Taxes;]

[(vi) Ref. No. 2009-20: ASU 2009-02, Omnibus Update - Amendments to Various Topics for Technical Corrections; and 2010-04: ASU 2010-03, Extractive Activities - Oil and Gas; and Ref. No. 2010-04: ASU 2010-03, Extractive Activities - Oil and Gas;]

[(2) In addition, the following exceptions and modifications are adopted:]

[(A) Settlement requirements for intercompany transactions are subject to the accounting treatment in Statement of Statutory Accounting Principles (SSAP) No. 9, and the provisions of §7.204 of this title (relating to Commissioner’s Approval Required). Intercompany balances shall be settled within 90 days of the period for which the services are being billed; otherwise the [such] balances shall be nonadmitted.

[(B) Retrospective premiums must be billed within 60 days of computation and audit premiums must be billed within 60 days of the completion of the audit in determining the beginning date from which the 90-day period is calculated to determine admissibility of uncollected premium balances under SSAP No. 6.

[(C) Electronic machines, constituting a data processing system or systems and operating systems software used in connection with the business of an insurance company acquired after December 31, 2000, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law and shall be amortized as provided by the Manual. Property [All such property] acquired prior to January 1, 2001, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law, and shall be amortized in full over a period not to exceed ten years.

[(D) Furniture, labor-saving devices, machines, and all other office equipment may be admitted as an asset as permitted by the Insurance Code §§841.004, 861.255, 862.001, and any other applicable law and, for [such] property acquired after December 31, 2000, depreciated in full over a period not to exceed five years. Property [All such property] acquired prior to January 1, 2001, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law, and shall be depreciated in full over a period not to exceed ten years.

[(E) All certificates of deposit, of any maturity, may be classified as cash and are subject to the accounting treatment contained in SSAP No. 2, notwithstanding the provisions of SSAP No. 26.

[(F) No change.]

[(G) In the event a domestic insurer desires to deviate from the accounting guidance in a Texas statute or any applicable regulation, the insurer must [shall] file a written request for a permitted accounting practice and obtain approval prior to using the accounting deviation in a financial statement. The [Such] filing must [shall] be made with the Deputy [Senior Associate] Commissioner of the Financial Regulation Division [Program], Texas Department of Insurance, Mail Code 305-2A, P.O. Box 149104, Austin, Texas 78714-9104 at least 30 days before filing the financial statement that is proposed to be affected by the deviated accounting practice. Insurers must [shall] not use deviated accounting practice without the department’s prior approval.

[(H) No change.]

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

Filed with the Office of the Secretary of State on June 15, 2012.
TRD-201203139
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: July 29, 2012
For further information, please call: (512) 463-6327

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new rules §48.2916, concerning day activity and health services under §1915(i) or Title XX of the Social Security Act, and §48.6033, concerning day activity and health services (DAHS); and amendments to §48.2915, concerning day activity and health services; §48.6002, concerning community-based alternatives (CBA) definitions; §48.6011, concerning provider claims payment; §48.6040, concerning registered nurse (RN) delegation of nursing tasks; §48.6050, concerning service array for home and community support services (HCSS); §48.6082, concerning mutually exclusive services; §48.6084, concerning service limits and claim limits; §48.6088, concerning required documentation for service delivery; and §48.6090, concerning fiscal monitoring and recoupment, in Chapter 48, Community Care for Aged and Disabled.

BACKGROUND AND PURPOSE

Day activity and health services (DAHS) are currently provided to all eligible individuals under §1902 and Title XX of the Social Security Act. The Centers for Medicare and Medicaid Services (CMS) recommended that the State of Texas consider covering DAHS under a §1915(i) amendment to the State Plan for individuals who do not have an intellectual disability or related condition. This option, established by the Deficit Reduction Act of 2005, allows certain home and community-based services to be provided under the State Plan. To ensure all individuals currently receiving DAHS will continue to receive DAHS, it became necessary to add DAHS as a service in the Community Based Alternatives (CBA) Program and the Medically Dependent Children Program (MDCP) §1915(c) Medicaid waivers. The procedures for DAHS under §1915(i) will apply to individuals receiving DAHS under Title XX.

The purpose of the amendments and new sections is to add DAHS as a waiver service in the CBA Program.

The proposal requires the DADS case manager to conduct an annual reassessment to determine ongoing eligibility; current rules do not require an annual reassessment.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §48.2915 revises the section to describe eligibility requirements for individuals with an intellectual disability or related condition who will receive DAHS through §1902 of the Social Security Act.

Proposed new §48.2916 details eligibility requirements for individuals who will receive DAHS through the §1915(i) or Title XX of the Social Security Act.

The proposed amendments to §48.6002 adds a definition for ADLs, Community Based Alternatives and DAHS.

The proposed amendment to §48.6011 requires a DAHS facility to comply with §98.211 regarding billing and payment.

Proposed new §48.6033 defines the criteria for providing DAHS under the CBA Program and includes individual eligibility requirements and freedom of choice requirements.

The proposed amendment to §48.6040 clarifies the requirements for delegation of nursing tasks, provides references to the Board of Nursing and requires a Home and Community Support Service Agencies (HCSSA) to coordinate care with all involved providers.

The proposed amendment to §48.6050 lists all of the services offered in CBA, not just those services offered by Home and Community Support Service Agencies (HCSSA). Services that are only delivered by HCSSAs are separated from the entire list of services. The amendment also references licensing rules or program rules that govern how certain CBA services are provided, such as adult foster care, emergency response services, and home delivered meals.

The proposed amendment to §48.6082 revises paragraphs (1) - (4) and adds paragraph (5) to clarify specific services that are not reimbursable by DADS.

The proposed amendment to §48.6084 adds service limits related to DAHS and specifies the maximum number of DAHS units that can be billed within a week.

The proposed amendment to §48.6088 corrects the term used to describe Home and Community Support Services Agency and requires the DAHS facility to comply with §98.209 regarding record maintenance requirements for DAHS facilities.

The proposed amendment to §48.6090 clarifies that a DAHS facility is subject to §98.210 regarding administrative errors and corrections.

Throughout the section "client" has been changed to "individual" and "DHS" to "DADS" to reflect current terminology.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments and new sections are in effect, enforcing or administering the amendments and new sections does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments and new sections will not have an adverse economic effect on small businesses or micro-businesses; the revised rules impose no new requirements that would have a fiscal impact.

PUBLIC BENEFIT AND COSTS

Jon Weizenbaum, DADS Deputy Commissioner, has determined that, for each year of the first five years the amendments and new sections are in effect, the public benefit expected as a result of enforcing the amendments and new sections is that individuals currently receiving DAHS will continue to receive those services.

Mr. Weizenbaum anticipates that there will not be an economic cost to persons who are required to comply with the amendments and new sections. The amendments and new sections will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.
PUBLIC COMMENT

Questions about the content of this proposal may be directed to Dana Williamson at (512) 438-3385 in DADS Policy Development Oversight Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-11R28, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to rulecomments@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the Texas Register. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 11R28" in the subject line.

SUBCHAPTER H. ELIGIBILITY

40 TAC §48.2915, §48.2916

STATUTORY AUTHORITY

The amendment and new section are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.


§48.2915. Day Activity and Health Services under §1902 of the Social Security Act.

(a) This section applies to an individual applying for or receiving day activity and health services (DAHS) under §1902 of the Social Security Act.

(b) To be eligible for day activity and health services (DAHS), an individual [applicant/client] must:

(1) [1] have an intellectual disability or related condition;

(2) [1] be Medicaid eligible or meet the income and resource guidelines established by the department in §§48.2902, 48.2903, 48.2922, and 48.2923 of this subchapter [title] (relating to Income and Income Eligibles; Determination of Countable Income; Resource Limits; and Countable Resources);

[2] meet the minimum functional need criteria as set by the department. The department uses a standardized assessment instrument to measure the client's ability to perform activities of daily living. This yields a score, which is a measure of the client's level of functional need. The department sets the minimum required score for a client to be eligible, which the department may periodically adjust commensurate with available funding. The department will seek stakeholder input before making any change in the minimum required score for functional eligibility. Clients receiving services on the effective date of this rule may continue to receive services until the department assesses the client's level of functional need;

(3) have a medical diagnosis; [, a related functional disability, and]

(4) have physician's orders requiring care, monitoring, or intervention by a licensed vocational nurse or a registered nurse; and

(5) [4] have a plan of care documenting the care, monitoring, or intervention ordered by the physician to be performed by a licensed vocational nurse or registered nurse at the DAHS facility. [one or more of the following personal care or restorative needs that can be stabilized, maintained, or improved by participation in DAHS:]

[(A) Bathing, dressing, and grooming. The applicant/client may need help with bathing, dressing, and routine hair and skin care:]

[(B) Transfer and ambulation. The applicant/client may need help with transferring from chair or commode or walking about:]

[(C) Toileting. The applicant/client may need help with using a bedpan, urinal, or commode; emptying a catheter or ostomy bag; or managing incontinence of bowel or bladder. The applicant/client may require perineal care or bowel or bladder training:]

[(D) Feeding. The applicant/client may need feeding (for example, gastric, NG tube, feeding pump) or help with eating:]

[(E) Fluid intake. The applicant/client may need assistance in maintaining adequate fluid intake:]

[(F) Nutrition. The applicant/client may need therapeutic diet or texture modification for treatment or control of an existing condition:]

[(G) Medication. The applicant/client may require supervision or administration of ordered medications or injectables:]

[(H) Treatments. The applicant/client may require treatments that include:]

[(i) routine or frequent care for indwelling catheter:]

[(ii) measurement of weight related to monitoring a specific condition:]

[(iii) assistance or supervision of ostomy care based on individual needs:]

[(iv) taking and recording of vital signs to monitor an existing condition or medications being administered:]

[(v) periodic testing of blood or urine for sugar/albumin content or both:]

[(vi) assistance with skin care including application of lotions, observations, assessment, or treatment of skin conditions based on physician's orders for prevention and healing decubitus and chronic skin conditions; and]

[(vii) application of sterile dressings and elastic stockings and bandages:]

[(I) Restorative nursing procedures. The applicant/client requires assistance with range of motion exercises (active or passive) or proper positioning:]

[(J) Behavioral problems. The applicant/client may have behavioral problems that can be managed by facility staff:]

§48.2916. Day Activity and Health Services under §1915(i) or Title XIX of the Social Security Act.

PROPOSED RULES June 29, 2012 37 TexReg 4811
(a) This section applies to an individual who is applying for or receiving day activity and health services (DAHS) through §1915(i) or Title XX of the Social Security Act.

(b) To be eligible for day activity and health services (DAHS), an individual must:

1. be Medicaid eligible or meet the income and resource guidelines described in §§48.2902, 48.2903, 48.2922, and 48.2923 of this subchapter (relating to Income and Income Eligibles; Determination of Countable Income; Resource Limits; and Countable Resources);

2. have a medical diagnosis;

3. have physician's orders requiring care, monitoring, or intervention by a licensed vocational nurse or a registered nurse;

4. have a need for assistance with at least one of the following activities of daily living involving personal care as determined by the DADS case manager on the DADS needs assessment questionnaire:
   - eating--assistance with preparing food to eat or hands-on assistance with feeding, or both;
   - toileting--assistance with clothing during toileting, assistance with bedpan, urinal, diapers, external catheter or colostomy bag;
   - transfer--assistance with rising from a sitting to a standing position, non-ambulatory positioning, assistance with ambulation, or any combination of these activities;
   - bathing--assistance with taking a bath or shower;
   - dressing--assistance with getting into or out of garments;
   - continence--assistance with hygiene in toileting; or
   - medication--assistance with taking prescribed medications; and

5. have a plan of care documenting the care, monitoring, or intervention ordered by the physician to be performed by a licensed vocational nurse or a registered nurse at the DAHS facility.

(c) To remain eligible for DAHS, an individual must be reassessed annually by the DADS case manager and determined to continue to meet the eligibility criteria in subsection (b) of this section. The physician orders must be the most current annual orders obtained in accordance with §98.206(b) of this title (relating to Program 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.

Filed with the Office of the Secretary of State on June 15, 2012.

TRD-201203159
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: July 29, 2012
For further information, please call: (512) 438-3734

SUBCHAPTER J  COMMUNITY BASED ALTERNATIVES (CBA) PROGRAM


STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendments and new section affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§48.6002. Community Based Alternatives (CBA) Definitions.

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

1. Advance notice--A statement of the action the state intends to take provided in writing to the individual or the individual's authorized representative; and advises them of the right to a hearing, the method by which a hearing may be obtained, and that the individual may represent himself, or use legal counsel, a relative, a friend, or other spokesperson. The Texas Department of Aging and Disability Services (DADS) must provide a notice to the individual at least 10 days before the date of action.

2. ADLs--Activities of daily living that are essential to daily self-care and limited to:
   - assisting with self-administered medications;
   - bathing;
   - dressing;
   - exercising;
   - feeding;
   - grooming;
   - meal preparation;
   - routine hair and skin care;
   - positioning;
   - toileting; and
   - transfer and ambulation.

3. CBA Program--The Community-Based Alternatives Program operated by DADS as authorized by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act.

4. DAHS--Day activity and health services. Services provided in accordance with Chapter 98 of this title (relating to Adult Day Care and Day Activity and Health Services Requirements).

5. [2] Denial--An action taken by DADS that:
   - rejects an applicant's request for enrollment into the CBA Program;
(B) rejects a CBA Program service requested on an ISP that was not previously authorized on the current ISP;

(C) rejects a request for an increase of a CBA program service above the amount that was authorized on the current ISP; or

(D) rejects, in part, the amount of a request for a CBA Program service that was not authorized on the current ISP.

(6) [§34] HCSSA--A home and community support services agency licensed by DADS in accordance with Texas Health and Safety Code, Chapter 142.

(7) [§44] ISP--An individual service plan is a written plan developed using person-directed planning to describe, for each CBA Program service to be provided to an individual, the type and amount of service, the type of provider, and the estimated cost.

(8) [§5] LVN--Licensed vocational nurse. A person licensed to provide vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(9) [§6] Reduction--An action taken by DADS that decreases the requested amount of a CBA Program service below the amount on the current ISP.

(10) [§7] RN--Registered nurse. A person licensed to provide professional nursing in accordance with Texas Occupations Code, Chapter 301.

(11) [§8] Suspension of services--A temporary reduction of waiver services without loss of program or Medicaid eligibility.

(12) [§9] Waiver Program--A Medicaid program that provides home and community-based services to a limited number of eligible adults who are aged and/or disabled as an alternative to institutional care in a nursing facility in accordance with the waiver provisions of the Social Security Act, §1915(c).

(13) [§10] Waiver Program Services--Medicaid home and community-based services provided under waiver provisions of the Social Security Act, §1915(c).

(14) [§11] Workday--Any day except Saturday, Sunday, a state holiday, or a federal holiday.

§48.6011. Provider Claims Payment.

(a) The organizations contracted to provide waiver program services are reimbursed based on a fee-for-service reimbursement methodology. The following conditions must be met for payment:

(1) services [Services] must be delivered to an eligible individual [clients] based on the ISP; [an individual plan of care.]  

(2) units [Units] of service that have been provided must be documented according to the ISP; and [individual plan of care.]

(3) the [The] organizations contracted to provide waiver program services must accept the payment from the [Texas] Department of Aging and Disability [Human] Services (DADS) [DAHS]) plus the individual’s [client’s] copayment as determined by DADS [DAHS] as payment in full for waiver program services.

(b) Room and board are not included in the reimbursement rate to providers except for respite care services.

(c) In addition to meeting the requirements in subsection (a) of this section, a DAHS facility must meet requirements outlined in §98.211 of this title (relating to Billing and Payment).

§48.6033. Day Activity and Health Services (DAHS).

(a) With the exception of §98.203 of this title (relating to Referral, Authorization, and Initiation of Services Under §1902, §1915(i) or Title XX of the Social Security Act), a DAHS facility must deliver DAHS as described in Chapter 98 of this title (relating to Adult Day Care and Day Activity and Health Services Requirements).

(b) An individual who meets the eligibility requirements for the CBA Program is eligible for DAHS without meeting the eligibility requirements outlined in §98.201(a) or (b) of this title (relating to Eligibility Requirements for Participation).

(c) An individual has the freedom to choose any DAHS facility. If the individual is receiving adult foster care from a provider who also operates a DAHS facility, the individual may choose to receive DAHS from that provider.

§48.6040. Nursing Tasks and Delegation [Registered Nurse (RN) Delegation of Nursing Tasks].

(a) Delegation and supervision of selected nursing tasks is permitted in the CBA Program [Nursing Facility Waiver]:

(1) by an RN [RNs] employed by a HCSSA [the home and community support services agencies] to personal care attendants and adult foster care providers of Level I and II adult foster care homes. Delegation will occur in accordance with the Texas Department of Health and Community Support Services licensure rules for the provider agency’s licensure category; and [or]

(2) by independent RNs to adult foster care providers of Level I and II, adult foster care homes. Delegation will occur in accordance with the rules from Texas Board of Nurse Examiners, 22 TAC Chapter 218; or

(b) An RN must delegate or assess health maintenance activities in accordance with:

(1) Texas Administrative Code (TAC), Title 22, Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); and

(2) 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable And Predictable Conditions).

(c) An RN employed by a HCSSA must coordinate care for an individual receiving CBA Program services with all involved providers in accordance with Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies).

§48.6050. CBA Program Service Array [for Home and Community Support Services (HCSSA)].

(a) The following services are available through CBA for inclusion on an individual’s ISP:

(1) adaptive aids;

(2) adult foster care (AFC);

(3) assisted living (AL);

(4) dental services;

(5) day activity and health services (DAHS);

(6) emergency response services (ERS);

(7) financial management services (FMS);
(8) home delivered meals (HDM);
(9) medical supplies;
(10) minor home modifications;
(11) nursing services;
(12) occupational therapy services;
(13) personal assistance services;
(14) physical therapy;
(15) prescribed drugs;
(16) respite:
   (A) as an in-home service in the individual's own home;
   or
   (B) as an out-of-home service in:
      (i) an adult foster care home licensed or certified by DADS;
      (ii) a Medicaid-certified nursing facility; or
      (iii) an assisted living facility licensed by DADS;
(17) speech, hearing, and language therapy;
(18) support consultation; and
(19) transition assistance services (TAS).

(b) A HCSSA must be able to deliver the following CBA services through an employee or contractor, or through a personal service agreement with a qualified person:

   (1) adaptive aids;
   (2) dental;
   (3) medical supplies;
   (4) minor home modifications;
   (5) nursing;
   (6) occupational therapy;
   (7) personal assistance;
   (8) physical therapy;
   (9) respite care (in-home); and
   (10) speech, hearing and language therapy.

(c) AFC services must be provided by a person licensed in accordance with Subchapter K of this chapter (relating to Minimum Standards for Adult Foster Care).

(d) AL services must be provided in a facility:

   (1) licensed in accordance with Chapter 92 of this title (relating to Licensing Standards for Assisted Living Facilities); and
   (2) contracted in accordance with Chapter 46 of this title (relating to Contracting to Provide Assisted Living and Residential Care Services).

(e) DAHS must be provided by a facility licensed and contracted in accordance with Chapter 98 of this title (relating to Adult Day Care and Day Activity and Health Services Requirements).

(f) Emergency response services (ERS) must be provided by a person or entity contracting with DADS for the provision of ERS in accordance with Chapter 52 of this title (relating to Contracting to Provide Emergency Response Services).

(g) FMS must be provided in accordance with Chapter 41 of this title (relating to Consumer Directed Services Option).

(h) Home delivered meals (HDM) must be provided by a person or entity contracting with DADS for the provision of HDM in accordance with Chapter 55 of this title (relating to Contracting to Provide Home-Delivered Meals).

(i) Support consultation must be provided in accordance with Chapter 41 of this title (relating to Consumer Directed Services Option).

(j) Transition assistance services must be provided by a person or entity that contracts with DADS in accordance with Chapter 62 of this title (relating to Contracting to Provide Transition Assistance Services).

[HCSS agencies must provide the array of home and community support services identified in paragraphs (1) - (9) of this section in accordance with the individual service plan through their own employees, subcontractors, or personal service agreements with qualified individuals. Services include:]

   [(1) personal assistance services;]
   [(2) nursing services;]
   [(3) physical therapy;]
   [(4) occupational therapy;]
   [(5) speech pathology services;]
   [(6) adaptive aids;]
   [(7) medical supplies;]
   [(8) minor home modifications; and]
   [(9) respite care (in-home).]

§48.6082. Mutually Exclusive Services. The following waiver services are considered to be mutually exclusive and are not reimbursable if billed by providers [allowed under the waiver]:

   (1) DADS does not reimburse a HCSSA for personal assistance services delivered to an individual during the same time period that respite care is provided to the individual. [A participant receiving In-Home Respite Care may not receive personal assistance services for the same period of time.]

   (2) DADS does not reimburse an assisted living facility (ALF), Type B, for minor home modifications to the residence of an individual. [A participant residing in a personal care facility, Type B, may not receive minor home modifications.]

   (3) DADS does not reimburse an ALF or a provider of adult foster care for the provision of [A participant residing in a personal care facility or an Adult Foster Care home may not receive] personal assistance services.

   (4) If two or more HCSSAs provide CBA services to an individual on the same date, DADS reimburses only one HCSSA for the provision of the CBA service. [A participant cannot receive any Home and Community Support Services reimbursed through the Community Based Alternatives program from two provider agencies on the same date.]

   (5) DADS does not reimburse a provider for the following services if delivered during the same time period that an individual receives DAHS:

      (A) personal assistance services;
(B) home delivered meals;
(C) occupational therapy;
(D) physical therapy;
(E) speech, hearing, and language therapy; and
(F) nursing provided through a HCSSA or CDS option.

§48.6084. Service Limits and Claim Limits.
(a) Service limits.
(1) The limits to an individual's services listed in paragraph (2) of this subsection are in effect through August 31, 2013.
(2) Subject to an exception granted by DADS in accordance with §48.6085 of this subchapter (relating to Exception to Service Limit), the following limits apply to an individual's services:
   (A) An individual may receive, during an ISP year, adaptive aids having a maximum cost of $2,050.
   (B) An individual may receive, during an ISP year, general dentistry services and the services of an oral and maxillofacial surgeon having a maximum combined cost of $4,675.
   (C) An individual may receive, during an ISP year, medical supplies having a maximum cost of $1,736.
   (D) During the time period an individual is enrolled in the CBA Program, an individual may receive minor home modifications that have a maximum cost of $6,550, which may be paid in one or more ISP years.
   (E) An individual may receive a maximum of 24 days of respite during an ISP year.
   (F) The maximum number of hours of a specialized therapy that an individual may receive during an ISP year is as follows:
      (i) for occupational therapy, 61 hours;
      (ii) for physical therapy, 86 hours; and
      (iii) for speech, hearing, and language therapy, 69 hours.
   (G) An individual may receive a maximum of 2,135 hours of PAS during an ISP year.
(3) Not subject to an exception granted by DADS, an individual may receive, during an ISP year, a maximum of $300 for repair and maintenance of a minor home modification.
(4) In accordance with §62.5(c) and (d) of this title (relating to Service Description), an individual may receive a maximum of $2,500 of transition assistance services.
(5) Effective September 1, 2013, the following limits apply to an individual:
   (A) For adaptive aids and medical supplies, minor home modifications, and respite during an ISP year, the maximum service ceilings described in §48.6003(b)(8)(A) - (C) of this subchapter (relating to Eligibility Criteria);
   (B) For dental services during an ISP year, a maximum combined cost of $5,000 for general dentistry and the services of an oral and maxillofacial surgeon and an additional maximum cost of $5,000 for the services of an oral and maxillofacial surgeon.
(6) An individual:
   (A) may receive a maximum of 10 units of DAHS per week including an individual receiving adult foster care;
   (B) receiving services in an assisted living facility may receive a maximum of one unit per day of DAHS, but only if the services provided by the DAHS facility are medical services that cannot be provided by the assisted living facility; and
   (C) who needs less than three hours of DAHS services per day is not eligible for DAHS.
(7) For purposes of paragraph (6) of this subsection, the term "unit" has the meaning described in §98.211(a) of this title (relating to Billing and Payment).
(b) Claim Limits.
   (1) A HCSSA may bill for a maximum of four hours of nursing services by an RN to decide whether or not to delegate a nursing task to an adult foster care provider.
   (2) A HCSSA may bill for a maximum of ten hours for authorized PAS hours performed by an LVN or RN for an individual during the ISP year.
      (A) The PAS hours performed by the LVN or RN may be billed at the nursing rate, only if there are no attendants available to perform the needed delegated nursing tasks and only an LVN or RN can be recruited to perform the authorized PAS hours.
      (B) The documentation must include all efforts the HCSSA made in order to find an attendant to deliver delegated tasks in order to prevent a break in service.
   (3) Components of minor home modifications cannot be billed without an invoice or in more than two billings.
   (4) A DAHS facility may bill a maximum of 10 units per week per individual.

(a) A HCSSA [Providers of Home and Community Support Services (HCSS services)] must document on the documentation of service delivery form, or an approved facsimile, that services reimbursed on an hourly basis are provided as authorized on the notification of Community Based Alternatives services form and identified on the individual service plan, including:
   (1) type of service delivered;
   (2) units of service delivered;
   (3) dates of service delivery; and
   (4) name of the individual providing waiver services.
(b) If documentation does not support the monthly claims, the HCSSA [HCSS agency] may be liable for monetary exceptions.
(c) The HCSSA [HCSS agency] must designate a timekeeper to verify that the hours recorded on the time sheet were worked and that the tasks assigned were completed. The timekeepers may be any person designated by the agency.
(d) The HCSSA employee must enter the daily total time and monthly total hours. An employee who is unable to complete and sign the time sheet may designate another person to complete and sign the time sheet. The HCSSA [HCSS agency] must document in writing the reasons the employee is unable to complete and sign the time sheet and must document in writing who is authorized to make these entries. The documentation may be a written statement that includes the following:
   (1) the HCSSA employee's name;
   (2) a brief summary of what portion of the time sheet the employee is unable to complete;
(3) the name and relationship of the person who has been designated to complete the form for the employee; and

(4) the timekeeper's signature and date. The timekeeper may add the monthly total of time with no exception taken, as long as the employee completes the daily total time.

(e) A DAHS facility is responsible for documenting services as outlined in §98.209 of this title (relating to Record Maintenance), §48.6090. Fiscal Monitoring and Recoupment.

(a) Administrative errors. A recoupment of 12% of the paid unit rate is the administrative error exception for services billed on an hourly basis. It represents the administrative portion of the rate. Administrative errors are applied to the documentation reviewed and are not extrapolated. Administrative errors include, but are not limited to:

(1) The CBA provider leaves the month and year of service blank. DADS applies the error to the total number of units documented on the time sheet.

(2) The timekeeper fails to enter a date of signature to certify the total number of hours the attendant, LVN, RN, or therapist worked. DADS applies the error to the total number of units documented on the time sheet.

(3) The timekeeper corrects the date of signature, but fails to initial the correction. DADS applies the error to the number of units reimbursed after the earliest signature date.

(4) The timekeeper enters an illegible date of signature or makes an illegible correction to the date. DADS applies the error to the total number of units documented on the time sheet.

(5) The timekeeper enters a date of signature that is before the date of the last day services are delivered. DADS applies the error to the total number of units reimbursed after the signature date.

(6) The timekeeper fails to sign the time sheet. DADS applies the error to the total number of units documented on the time sheet.

(7) The timekeeper uses a signature stamp, but fails to initial the stamped signature. DADS applies the error to the total number of units documented on the time sheet.

(8) The attendant, LVN, RN, therapist, or timekeeper uses correction fluid or tape to correct an entry in the record of time, signature, or date portion of the time sheet. DADS applies the error to the total number of units documented on the time sheet. If the correction fluid or tape is used only on a daily entry in the record of time, DADS applies the error only to the total number of units reimbursed for that day.

(9) The attendant, LVN, RN, therapist, or timekeeper makes an illegible entry in or an illegible correction to any portion of the record of time column. DADS applies the error to the total number of units reimbursed for the days in which entries are illegible.

(10) The attendant fails to initial an increase in the daily time or the monthly total of hours for the pay period. DADS applies the error to the number of units reimbursed in excess of the original entry.

(11) The attendant, LVN, RN, therapist, or other agency representative fails to sign the documentation of services delivered form or facsimile. DADS applies the error to the total number of units documented on the time sheet.

(12) DADS reimburses the HCSSA for nursing, occupational therapy, personal assistance services, physical therapy, and speech, hearing, and language therapy, or in-home respite, but a valid ISP and all pertinent attachments, signed by the case manager, is missing for the period reimbursed by DADS. DADS applies the error to the total number of units of nursing, occupational therapy, personal assistance services, physical therapy, and speech, hearing, and language therapy, or in-home respite, claimed and not covered by a valid ISP.

(13) DADS reimburses the HCSSA for nursing services and there is no other documentation available to determine whether the nurse provided billable nursing services during the visit.

(14) A DAHS facility is subject to requirements described in §98.210 of this title (relating to Administrative Errors and Corrections).

(b) Financial errors. A reduction of 100% of the paid unit rate is the financial error exception. This exception is applied to the units of service on the documentation reviewed. This exception is not extrapolated. Financial errors include, but are not limited to, the following:

(1) DADS reimburses the HCSSA for services, but the documentation of services delivered form, or facsimile, is missing for the period for which services are reimbursed. DADS applies the error to the total number of units documented on the time sheet.

(2) The attendant, LVN, RN, occupational therapist, physical therapist, or speech, hearing, and language therapist leaves the entire record of time section blank. DADS applies the error to the total number of units documented on the time sheet.

(3) DADS reimburses the CBA provider for hours that exceed the authorization given by DADS. DADS applies the error to the total number of hours reimbursed in excess of the number of hours authorized by DADS, unless purchased following emergency procedures. For nursing tasks, the maximum monthly hours that may be reimbursed is the number of hours listed under "NURSING TASKS, Direct Nursing Performed by HCSSA" on the nursing service plan.

(4) DADS reimburses the CBA provider for any waiver service that is not identified on the ISP and attachments, unless the service was provided as a result of an emergency and is supported by backup documentation supplied by the CBA provider within seven DADS workdays after the date the emergency was determined. DADS applies the error to the entire amount reimbursed for such services.

(5) DADS reimburses the CBA provider for hours that exceed the total number of hours recorded on the documentation of services delivered form or facsimile. DADS applies the error to the total number of hours reimbursed in excess of the hours recorded on the time sheet. If the sum of the daily total of hours does not equal what is written in the monthly total blank, the lesser of the two totals is used to calculate the total number of hours subject to the error.

(6) DADS reimburses the HCSSA for nursing, physical therapy, occupational therapy, or speech, hearing, and language therapy services, but a valid physician's order is missing. DADS applies the error to the total number of units claimed and not covered by a valid physician's order.

(7) DADS reimburses the HCSSA for a claim for service, other than a pre-enrollment home health assessment, delivered prior to the eligibility effective date on the notification of Community Based Alternatives services form. DADS applies the error to the entire amount reimbursed for such services that were delivered before the effective date on the form.

(8) DADS reimburses the HCSSA for any hours or items that consisted of non-billable time and activities as identified in §48.6080 of this subchapter (relating to Non-Billable Time and
Activities. DADS applies the error to the entire amount reimbursed for such services.

(9) DADS reimburses the HCSSA for more than four hours of nursing used to decide whether to delegate to an adult foster care provider. DADS applies the error to the total number of units reimbursed for such services.

(10) DADS reimburses the HCSSA for more than 10 hours during the ISP year for nursing services being performed by an LVN or RN to prevent service breaks caused by the attendant not being available to provide delegated nursing tasks. DADS applies the error to the total number of units reimbursed in excess of the 10 hour maximum for such services.

(11) DADS reimburses the CBA provider for an amount in excess of the amount documented on the invoice or receipt for an adaptive aid, dental services, medical supply, or minor home modification. DADS applies the error to the total number of dollars reimbursed in excess of the amount on the invoice or receipt.

(12) If there is no invoice, receipt, or ISP for the purchase of an adaptive aid, dental services, or medical supply, or for the completion of a minor home modification for which the HCSSA has been reimbursed, DADS applies the error to the total dollar amount reimbursed for the adaptive aid or medical supply, dental services, or minor home modification.

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

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Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-3734

CHAPTER 51. MEDICALLY DEPENDENT CHILDREN PROGRAM

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §51.103, concerning definitions; §51.231, concerning service limitations; §51.411, concerning general service delivery requirements; §51.413, concerning response to service authorization; §51.509, concerning claims and service delivery records; §51.511, concerning billable time and activities; and new §51.481, concerning day activity and health services, in Chapter 51, Medically Dependent Children Program.

BACKGROUND AND PURPOSE

Day activity and health services (DAHS) are currently provided to all eligible individuals under §1902 and Title XX of the Social Security Act. The Centers for Medicare and Medicaid Services (CMS) recommended that the State of Texas consider covering DAHS under a §1915(l) amendment to the State Plan for individuals who do not have an intellectual disability or related condition. This option, established by the Deficit Reduction Act of 2005, allows certain home and community-based services to be provided under the State Plan. To ensure all individuals currently receiving DAHS will continue to receive DAHS, it became necessary to add DAHS as a service in the Community Based Alternatives Program and the Medically Dependent Children Program (MDCP) §1915(c) Medicaid waivers. The procedures for DAHS under §1915(l) will apply to individuals receiving DAHS under Title XX.

The purpose of the amendments and new sections is to add DAHS as a waiver service in MDCP.

The proposal requires the DADS case manager to conduct an annual reassessment to determine ongoing eligibility; current rules do not require an annual reassessment.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §51.103 adds a definition for DAHS.

The proposed amendment to §51.231 adds age requirement, service limits related to DAHS and specifies the maximum number of DAHS units that can be billed within a week.

The proposed amendment to §51.411 clarifies the requirements that pertain to a respite or adjunct support services provider.

The proposed amendment to §51.413 clarifies the requirements that pertain to a respite or adjunct support services provider.

The proposed new §51.481 sets forth the criteria for providing DAHS under the MDCP program and includes individual eligibility requirements.

The proposed amendment to §51.509 states a DAHS facility is subject to §98.210 regarding administrative errors and corrections, in addition to §51.509.

The proposed amendment to §51.511 requires a DAHS facility to comply with §98.211 regarding billing and payment.

FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments and new section are in effect, enforcing or administering the amendments and new section does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments and new section will not have an adverse economic effect on small businesses or micro-businesses, the revised rules impose no new requirements that would have a fiscal impact.

PUBLIC BENEFIT AND COSTS

Jon Weizenbaum, DADS Deputy Commissioner, has determined that, for each year of the first five years the amendments and new section are in effect, the public benefit expected as a result of enforcing the amendments and new section is that individuals currently receiving DAHS will continue to receive those services.

Mr. Weizenbaum anticipates that there will not be an economic cost to persons who are required to comply with the amendments and new section. The amendments and new section will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Dana Williamson at (512) 438-3385 in DADS Policy Development Oversight Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-11R28, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to rulescomments@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the Texas Register. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 11R28" in the subject line.

SUBCHAPTER A. INTRODUCTION

40 TAC §51.103

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§51.103. Definitions.

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

(1) §1915(c) waiver program—A home or community-based service authorized by §1915(c) of the Social Security Act and approved by the Centers for Medicare and Medicaid Services.

(2) Activities of daily living—Activities that are essential to daily self care, including bathing, dressing, grooming, routine hair and skin care, meal preparation, feeding, exercising, toileting, transfer and ambulation, positioning, range of motion, and assistance with self-administered medications.

(3) Adaptive aid—A device that is needed to treat, rehabilitate, prevent, or compensate for a condition that results in a disability or a loss of function and helps an individual perform the activities of daily living or control the environment in which he lives.

(4) Adjunct support services—Direct care services needed because of an individual’s disability that:

(A) help an individual participate in:

(i) child care;

(ii) post-secondary education; or

(iii) independent living; or

(B) support an individual's move to an independent living situation.

(5) Appeal—A request for a hearing to challenge a service suspension, service reduction, service denial, or case closure.

(6) Attendant—An employee of a provider or of an individual who has selected the consumer directed services option who provides direct care to the individual.

(7) Basic child care—Watchful attention and supervision of an individual while the individual’s primary caregiver is at work, in job training, or at school.

(8) BNE—Formerly, this referred to the Board of Nurse Examiners for the State of Texas. It now refers to the Texas Board of Nursing.

(9) Case closure—A DADS action that terminates an individual from MDCP services.

(10) Case manager—A DADS employee who is responsible for case management activities for an individual, including eligibility determination, enrollment, assessment and reassessment of the individual’s need, service plan development, and intercession on the individual’s behalf.

(11) Consumer directed services—A means of service delivery in which an individual or the individual’s parent or guardian is the employer of the attendant.

(12) Contract—A written agreement between DADS and a provider to provide MDCP services to an individual in exchange for payment.

(13) Cost ceiling—The maximum dollar amount available to an individual for MDCP services per IPC year.

(14) DADS—Department of Aging and Disability Services.

(15) DADS RN—A DADS employee who is an RN and has two years of experience in pediatric nursing.

(16) Day—Any reference to a day means a calendar day, unless otherwise specified in the text. A calendar day includes weekends and holidays.

(17) Day activity and health services (DAHS)—Services provided in accordance with Chapter 98 of this title (relating to Adult Day Care and Day Activity and Health Services Requirements).

(18) [(47)] Delegated task—A task that a practitioner or RN delegates in accordance with state law.

(19) [(48)] DFPS—Department of Family and Protective Services.

(20) [(49)] Facility-based respite—Respite services provided to an individual in a licensed hospital or nursing facility.

(21) [(50)] Family member—A person who is related by blood, by affinity, or by law to an individual.

(22) [(51)] Foster home—Means a foster home as defined in the Human Resources Code, §42.002.

(23) [(52)] Guardian—A person appointed as a guardian of the estate or of the person by a court.

(24) [(53)] HHSC—Texas Health and Human Services Commission.
Host family--A provider with whom an individual lives when the individual's parents are unable to care for him.

Imminent danger--An immediate, real threat to a person's safety.

Individual--A person who has been determined eligible to receive MDCP services.

Interest list--A list of people who have contacted DADS and expressed an interest in MDCP services but have not applied for nor been determined eligible for MDCP services.

IPC--Individual plan of care. A plan that documents the following:

(A) services provided to an individual through both MDCP and third-party resources, and the sources or providers of those services;

(B) medical information about the individual obtained by a DADS RN;

(C) a social assessment of the individual and the individual's family obtained by the case manager;

(D) the projected cost of the MDCP services;

(E) the service initiation date; and

(F) the respite or adjunct support services provider's service schedule.

IPC year--A period not to exceed 365 days that is recorded on the IPC with a beginning and end date.

LVN--Licensed vocational nurse. A person licensed by the Texas Board of Nursing or who holds a license from another state recognized by the Texas Board of Nursing to practice vocational nursing in Texas.

MDCP--Medically Dependent Children Program. A §1915(c) waiver program that provides community-based services to help the primary caregiver care for an individual in the community.

Medical necessity--The medical criteria a person must meet for admission to a Texas nursing facility.

Minor home modification--A physical change to an individual's residence that is needed to prevent institutionalization or to support the most integrated setting for an individual to remain in the community.

Parent--An individual's natural or adoptive parent or the spouse of the natural or adoptive parent.

Practitioner--A physician currently licensed in Texas, Louisiana, Arkansas, Oklahoma, or New Mexico; a physician assistant currently licensed in Texas; or an RN approved by the Texas Board of Nursing to practice as an advanced practice nurse.

Primary caregiver--A person who:

(A) is legally responsible for an individual's routine daily care, provision of food, shelter, clothing, health care, education, nurturing, and supervision; and

(B) provides daily, uncompensated care for the individual.

Provider--An entity that has a contract with DADS to provide MDCP services.

Reckless behavior--Acting with conscious indifference to the consequences.

Residence--The place where an individual lives.

Respite services--Direct care services needed because of an individual's disability that provide a primary caregiver temporary relief from caregiving activities when the primary caregiver would usually perform such activities.

RN--Registered nurse. A person licensed by the Texas Board of Nursing or who holds a license from another state recognized by the Texas Board of Nursing to practice professional nursing in Texas.

Service authorization form--Document that shows DADS approval for a provider to deliver MDCP services.

Service initiation date--The first day an individual begins receiving MDCP services.

Service reduction--A temporary or permanent decrease in the number of service hours delivered to an individual.

Service schedule--A schedule for delivering respite or adjunct support services to an individual that is agreed upon and signed by the individual or the individual's parent or guardian. A fixed service schedule specifies certain days, times of day, or time periods for delivery of the services. A variable service schedule specifies the number of authorized hours of services to be delivered per day, per week, or per month, but does not specify certain days, times of day, or time periods for delivery of the services.

Service suspension--A temporary stoppage of MDCP services without loss of program or Medicaid eligibility.

Texas Accessibility Standards--Texas Department of Licensing and Regulation building standards adopted to meet the provisions of Texas Government Code, Chapter 469, and to meet or exceed the construction and alterations requirements of Title III of the Americans with Disabilities Act (42 U.S.C. §§12181-12189).

Third-party resources--Goods and services available to an individual from a source other than MDCP, such as Medicaid home health, Texas Health Steps Comprehensive Care Program, and private insurance.

Transition assistance services--One-time service provided to a Medicaid-eligible resident of a nursing facility located in Texas to assist the resident in moving from the nursing facility into the community to receive MDCP services.

Working day--Any day except Saturday, Sunday, a state holiday, or a federal holiday.

This 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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Kenneth L. Owens
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Department of Aging and Disability Services
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SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND SERVICES
DIVISION 3. SERVICES

**40 TAC §51.231**

**STATUTORY AUTHORITY**

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§51.231. Service Limitations.

(a) General. The individual or the individual's parent or guardian may not ask the provider to provide MDCP services to any other household member while serving the individual in the individual's residence.

(b) Respite.

(1) Respite services may not be provided in a setting in which identical services are already being provided.

(2) Subject to an exception granted by DADS in accordance with §51.232 of this division (relating to Exception to Service Limit), an individual may receive a maximum of 2,096 hours of respite during an IPC year, of which 144 hours (six days) may be used for facility based respite.

(3) The service limit described in paragraph (2) of this subsection is in effect through August 31, 2013.

(4) Effective September 1, 2013, an individual may be admitted to facility-based respite for a maximum of 29 days during an IPC year with the amount of respite other than facility-based respite subject to the IPC cost limit as described in §51.203(7) of this subchapter (relating to Eligibility Requirements). If the DADS case manager receives information demonstrating the need of the parent or guardian to admit the individual to facility-based respite in excess of 29 days during an IPC year, the DADS case manager determines whether providing facility-based respite in excess of the limit is necessary for the IPC to meet the criteria described in §51.217(b) of this subchapter (relating to Individual Plan of Care).

(c) Adjunct support services.

(1) Subject to an exception granted by DADS in accordance with §51.232 of this division, an individual may receive a maximum of 1,875 hours of adjunct support services during an IPC year.

(2) The service limit described in paragraph (1) of this subsection is in effect through August 31, 2013.

(3) Adjunct support services may be used only when the primary caregiver is working, attending job training, or attending school.

(d) Adaptive aids.

(1) An individual may receive adaptive aids having a maximum cost of $4,000 during an IPC year.

(2) The service limit described in paragraph (1) of this subsection is not subject to an exception.

(3) DADS does not reimburse for an adaptive aid costing less than $100.

(e) Minor home modifications.

(1) An individual may receive minor home modifications during the individual's lifetime having a maximum cost of $7,500, which may be paid in one or more IPC years.

(2) An individual may receive, during an IPC year, a maximum of $300 for repair and maintenance of a minor home modification.

(f) Transition assistance services.

(1) An individual may access transition assistance services only once in the individual's lifetime.

(2) The cost ceiling for transition assistance services is $2,500.

(g) Day activity and health services.

(1) An individual must be at least 18 years of age to access DAHS.

(2) An individual may receive a maximum of 10 units of DAHS per week. For purposes of this subsection, the term "unit" has the meaning described in §98.211(a) of this title (relating to Billing and Payment).

(3) An individual may not receive DAHS during the time the individual is receiving respite or adjunct support services.

(4) An individual who needs less than three hours of service per day is not eligible for DAHS.

This 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. PROVIDER REQUIREMENTS
DIVISION 2. SERVICE DELIVERY REQUIREMENTS FOR ALL PROVIDERS

**40 TAC §51.411, §51.413**

**STATUTORY AUTHORITY**

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council
shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§51.411. General Service Delivery Requirements.  
(a) A provider must provide services as indicated on the service authorization form.

(b) A respite or adjunct support services provider must:

   (1) provide services as indicated on the service authorization form and according to the service schedule; and

   (2) [A provider must] have an alternative service delivery plan in case the provider is unable to deliver services as scheduled; and

   (3) [The provider must] ensure that an attendant, RN, or LVN provides MDCP services to only one individual during the time scheduled for the individual.

§51.413. Response to Service Authorization.

(a) A provider must receive the service authorization form from the case manager before delivering services.

(b) A respite or adjunct support services provider, within [Within] 14 days after receiving the service authorization form, [the provider] must send the following to the case manager:

   (1) a signed copy of the service authorization form; and

   (2) a signed copy of the practitioner’s orders. [This paragraph applies only to a respite or adjunct support services provider that is—]

      (A) a home and community support services agency using—

      (i) an RN;

      (ii) an LVN; or

      (iii) an attendant with delegated nursing tasks; or

      (B) an independently contracted RN or LVN—

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

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SUBCHAPTER E. CLAIMS PAYMENT AND DOCUMENTATION

40 TAC §51.509, §51.511

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.
The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

(a) The provider must ensure that the claim for reimbursement corresponds to the provider’s service authorization form and service delivery records and that the records contain:
   (1) the IPC and attachments; and
   (2) documentation of services delivered.
(b) In addition to the requirements in subsection (a) of this section, the minor home modification provider’s records must contain:
   (1) receipts from the subcontractor (if applicable) for the completed minor home modification, documenting the date of completion and the cost of the modification;
   (2) any applicable building permits;
   (3) written specifications, if required;
   (4) written approval from the homeowner for the minor home modification made; and
   (5) purchase completion documentation, as described in §51.505 of this chapter (relating to Purchase Completion Documentation).
(c) In addition to the requirements in subsection (a) of this section, an adaptive aid provider’s records must contain:
   (1) written approval from the vehicle owner for any vehicle modification made; and
   (2) purchase completion documentation, as described in §51.505 of this chapter.
(d) In addition to the requirements in subsection (a) of this section, a DAHS provider is subject to the requirements described in §98.210 of this title (relating to Administrative Errors and Corrections).

§51.511. Billable Time and Activities.
(a) The provider may bill for and DADS will approve payment for:
   (1) respite services;
   (2) adjunct support services;
   (3) minor home modifications, including:
      (A) cost of labor;
      (B) materials;
      (C) sales tax;
      (D) actual cost of written specification development up to $200; and
      (E) actual cost of the inspection up to $150;
   (4) adaptive aids, including:
      (A) invoice cost of the item;
      (B) actual cost, when the item is purchased through a supplier; and
      (C) sales tax; and
   (5) transition assistance services; and
   (6) day activity and health services (DAHS).
(b) For DAHS, the provider must meet requirements described in §98.211 of this title (relating to Billing and Payment).

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

Filed with the Office of the Secretary of State on June 15, 2012.
TRD-201203165
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: July 29, 2012
For further information, please call: (512) 438-3734

CHAPTER 98. ADULT DAY CARE AND DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §98.2, concerning definitions; §98.201, concerning eligibility requirements for participation; §98.206, concerning program requirements; §98.207, concerning suspension of day activity and health services; §98.211, concerning billing and payment; and new §98.203, concerning referral, authorization, and initiation of services under §1902, §1915(i), or Title XX of the Social Security Act; §98.204, concerning authorization and initiation of services for individuals applying for or receiving DAHS through CBA or MDCP; §98.205, concerning DAHS facility-initiated referrals; and the repeal of §98.203, concerning written referrals for services; §98.204, concerning DAHS facility initiated referrals; and §98.205, concerning initiation of services, in Chapter 98, Adult Day Care and Day Activity and Health Services Requirements.

BACKGROUND AND PURPOSE

Day Activity and Health Services (DAHS) are currently provided to all eligible individuals under §1902 and Title XX of the Social Security Act. The Centers for Medicare and Medicaid Services (CMS) recommended that the State of Texas consider covering DAHS under a §1915(i) amendment to the State Plan for individuals who do not have an intellectual disability or related condition. This option, established by the Deficit Reduction Act of 2005, allows certain home and community-based services to be provided under the State Plan. To ensure all individuals currently receiving DAHS will continue to receive DAHS, it became necessary to add DAHS as a service in the Community Based Alternatives Program and the Medically Dependent Children Program §1915(c) Medicaid waivers. The procedures for DAHS under §1915(i) will apply to individuals receiving DAHS under Title XX.

The proposal includes several key changes regarding DAHS. For all individuals, a DADS case manager will conduct an initial face-to-face evaluation and assessment of an individual to determine eligibility for DAHS; currently the DADS regional nurse determines eligibility based on information provided by the DAHS facility. For individuals receiving DAHS under §1915(i) or Title XX, a DADS case manager will conduct an annual reassessment to determine ongoing eligibility; current rules do not require annual reassessment. For individuals receiving DAHS under §1915(i) or Title XX, the DAHS facility is required to obtain annual physician orders; current rules do not require such orders. The proposal also requires a DAHS facility to maintain seatbelts in all vehicles manufactured with seatbelts, include safety restraints.
Jon Weizenbaum, DADS Deputy Commissioner, has determined that, for each year of the first five years the amendments, new sections and repeals are in effect, the public benefit expected as a result of enacting the amendments, new sections and repeals is that individuals currently receiving day activity and health services will continue to receive those services.

Mr. Weizenbaum anticipates that there will not be an economic cost to persons who are required to comply with the amendments, new sections and repeals. The amendments, new sections and repeals will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Dana Williamson at (512) 438-3385 in DADS Policy Development Oversight Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-11R28, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to rulescomments@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the Texas Register. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 11R28" in the subject line.
or disabled person, including any involuntary or nonconsensual sexual conduct that would constitute an offense under §21.08, Penal Code (indecent exposure) or Chapter 22, Penal Code (assaultive offenses) committed by the person's caretaker, family member, or other individual who has an ongoing relationship with the person.

(2) Adult--A person 18 years of age or older, or an emancipated minor.

(3) Adult day care facility--A facility that provides services under an Adult Day Care Program on a daily or regular basis, but not overnight, to four or more elderly or handicapped persons who are not related by blood, marriage, or adoption to the owner of the facility.

(4) Adult day care program--A structured, comprehensive program that is designed to meet the needs of adults with functional impairments through an individual plan of care by providing health, social, and related support services in a protective setting.

(5) Affiliate--With respect to a:
(A) partnership, each partner thereof;
(B) corporation, each officer, director, principal stockholder, and subsidiary; and each person with a disclosable interest;
(C) natural person which includes each:
(i) person's spouse;
(ii) partnership and each partner thereof of which said person or any affiliate of said person is a partner; and
(iii) corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(6) Ambulatory--Mobility not relying on walker, crutch, cane, other physical object, or use of wheelchair.

(7) Applicant--A person applying for a license under Texas Human Resources Code, Chapter 103.

(8) Authorization--A case manager's [Department of Aging and Disability Services' (DAHS) employee] decision, before services begin and before payment can be made, that DAHS [Day Activity and Health Services (DAHS)] may be provided to an individual [a client].

(9) Case manager--A DAHS employee who is responsible for DAHS case management activities. Activities include eligibility determination, individual enrollment, assessment and reassessment of an individual's need, service plan development, and intercession on the individual's behalf.

(10) [49] Caseworker--Case manager. [A DAHS employee who is responsible for DAHS case management activities. Activities include eligibility determination, client registration, assessment and reassessment of client's need, service plan development, and intercession on the client's behalf.]

(11) CBA Program--The Community Based Alternatives Program operated by DAHS as authorized by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act.

(12) [40] Client--Individual. [A person who receives the services of an adult day care program, including a DAHS program.]

(13) [41] Construction, existing--See definition of existing building.


(15) [43] Construction, permanent--A building or structure that meets a nationally recognized building code's details for foundations, floors, walls, columns, and roofs.

(16) [44] Contract manager--A DAHS employee, designated as the primary contact point between the facility and DAHS, who is responsible for the overall management of the DAHS contract.

(17) [45] DADS--The Department of Aging and Disability Services.

(18) [46] DAHS facility--An entity that contracts with DAHS to provide day activity and health services.

(19) [47] Day activity and health services [Activity and Health Services (DAHS)]--Structured program services designed to meet the needs of an adult by providing health, social, and related services in a DAHS facility. [Day activity and health services provided under a contract with DAHS to clients residing in the community.]

(20) [48] Days--Calendar days, not workdays, unless otherwise noted in the text.

(21) [49] Department--Department of Aging and Disability Services.

(22) [50] DHS--Formerly, this term referred to the Texas Department of Human Services; it now refers to DAHS.

(23) [51] Dietitian consultant--A registered dietitian; a person licensed by the Texas State Board of Examiners of Dietitians; or a person with a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management.

(24) [52] Direct service staff--An employee of a facility who provides direct services to clients, including the director, a licensed nurse, the activities director, and an attendant. An attendant is a person who may provide direct services to clients of the facility such as a facility bus driver, food service worker, aide, janitor, porter, maid, and laundry worker.

(25) [53] Director--The person responsible for the overall operation of a facility.

(26) [54] Elderly person--A person 65 years of age or older.

(27) [55] Existing building--In these standards, except where defined otherwise, a building either occupied as an adult day care facility at the time of initial inspection by DAHS or converted to occupancy as an adult day care facility.

(28) [56] Exploitation--An illegal or improper act or process of a caretaker, family member, or other individual, who has an ongoing relationship with the elderly person or person with a disability, using the resources of an elderly person or person with a disability for monetary or personal benefit, profit, or gain without the informed consent of the elderly person or person with a disability.

(29) [57] Facility--An adult day care facility, unless otherwise specified.

(30) [58] Fence--A barrier to prevent elopement of a client or intrusion by an unauthorized person, consisting of posts, columns, or other support members, and vertical or horizontal members of wood, masonry, or metal.

(31) [59] FM approval--A third-party certification of a product by FM (formerly known as Factory Mutual Insurance Company). FM approval provides third-party certification and testing of products acceptable to DAHS.
Chapter

by

bag; or with colostomy bedpan, external features

personal characteristics

standing provided

monitoring

public

ventive in-home assistance

Families, specific

health

assistance

taking

(35)

(34)

(37)

(32) Fraud--A deliberate misrepresentation or intentional concealment of information to receive or to be reimbursed for service delivery to which an individual is not entitled.

(33) Functional impairment--A condition that requires assistance with one or more of the following: [personal care services including bathing, dressing, preparing meals, feeding, grooming, taking self-administered medication, toileting, and ambulation.]

(A) bathing--assistance with taking a bath or shower;

(B) continence--assistance with hygiene in toileting;

(C) dressing--assistance with getting into or out of garments;

(D) eating--assistance with preparing food to eat or hands on assistance with feeding or both;

(E) medication--assistance with taking prescribed medications;

(F) toileting--assistance with clothing during toileting, assistance with bedpan, urinal, diapers, external catheter or colostomy bag; and

(G) transfer--assistance with rising from a sitting to a standing position, non-ambulatory positioning, assistance with ambulation, or any combination of these activities.

(34) Handicapped person--As used in this chapter, the term "person with disabilities" is used in place of the term "handicapped person" as that term is used in Texas Human Resources Code, Chapter 103.

(35) Health assessment--A plan of care that identifies the specific needs of a client and how those needs will be addressed by a facility.

(36) Health services--Health services include personal care, nursing, and therapy services. Personal care services include services listed under the definition of functional impairment in this section. Nursing services may include the administration of medications; physician-ordered treatments, such as dressing changes; and monitoring the health condition of the individual. Therapy services may include physical, occupational, or speech therapy.

(37) Human services--All of the following major areas constitute human services:

(A) personal social services (day care, counseling, in-home care, protective services);

(B) health services (home health, family planning, preventive health programs, nursing home, hospice);

(C) education services (all levels of school, Head Start, vocational programs);

(D) housing and urban environment services (Section 8, public housing);

(E) income transfer services (Temporary Assistance for Needy Families, Food Stamps); and

(F) justice and public safety services (parole and probation, rehabilitation).

(38) Human service program--An intentional, organized, ongoing effort designed to provide good to others. The characteristics of human service programs are that they are:

(A) dependent on public resources and are planned and provided by the community;

(B) directed toward meeting human needs arising from day-to-day socialization, health care, and developmental experiences;

(C) used to aid, rehabilitate, or treat those in difficulty or need.

(39) Individual--A person who applies for or is receiving services provided at an adult day care or DAHS facility.

(40) Individual plan of care--A written plan developed by a DAHS facility that documents functional impairment and the health, social, and related support needed by an individual. The plan is developed jointly with and approved by the individual or responsible party.

(41) Licensed vocational nurse (LVN)--A person currently licensed by the Board of Nurse Examiners for the State of Texas who works under the supervision of a registered nurse (RN) or a physician.


(43) Long-term care facility--A facility that provides care and treatment or personal care services to four or more unrelated persons, including a nursing facility, an assisted living facility, and a facility serving persons with mental retardation and related conditions.

(44) 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 services. Management services do not include contracts solely for maintenance, laundry, or food services.

(45) Manager--A person having a contractual relationship to provide management services to a facility.

(46) Medicaid-eligible--An individual who is eligible for Medicaid.

(47) Medically-related program--A human services program under the human services-health services category in the definition of human services in this section.

(48) MDCP Program--The Medically Dependent Children Program operated by DADS as authorized by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act.

(49) Neglect--The failure to provide for oneself the goods or services that are necessary to avoid physical harm, mental anguish, or mental illness; or the failure of a caregiver to provide these goods or services.

(50) NFPA--The National Fire Protection Association. NFPA is an organization that develops codes, standards, recommended practices, and guidelines through a consensus standards development process approved by the American National Standards Institute.
(51) NFPA 10--Standard for Portable Fire Extinguishers. A standard developed by NFPA for the selection, installation, inspection, maintenance, and testing of portable fire extinguishing equipment.

(52) NFPA 13--Standard for the Installation of Sprinkler Systems. A standard developed by NFPA for the minimum requirements for the design and installation of automatic fire sprinkler systems, including the character and adequacy of water supplies and the selection of sprinklers, fittings, pipes, valves, and all maintenance and accessories.

(53) NFPA 70--National Electrical Code. A code developed by NFPA for the installation of electric conductors and equipment.

(54) NFPA 72--National Fire Alarm Code. A code developed by NFPA for the application, installation, performance, and maintenance of fire alarm systems and their components.

(55) NFPA 90A--Standard for the Installation of Air Conditioning and Ventilating Systems. A standard developed by NFPA for systems for the movement of environmental air in structures that serve spaces over 25,000 cubic feet or buildings of certain heights and construction types, or both.

(56) NFPA 90B--Standard for the Installation of Warm Air Heating and Air-Conditioning Systems. A standard developed by NFPA for systems for the movement of environmental air in one- or two-family dwellings and structures that serve spaces not exceeding 25,000 cubic feet.

(57) NFPA 96--Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations. A standard developed by NFPA that provides the minimum fire safety requirements related to the design, installation, operation, inspection, and maintenance of all public and private cooking operations, except for single-family residential usage.

(58) Nurse--A registered nurse (RN) or a licensed vocational nurse (LVN) licensed in the state of Texas.

(59) Nursing services--Services provided by licensed nursing personnel, which include observation; promotion and maintenance of health; prevention of illness and disability; management of health care during acute and chronic phases of illness; guidance and counseling of individuals and families; and referral to physicians, other health care providers, and community resources when appropriate.

(60) Person--An individual, corporation, or association.

(61) Person with a disclosable interest--A person with a disclosable interest is any person who owns five percent interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Human Resources Code, Chapter 103. 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.

(62) Person with disabilities--A person whose functioning is sufficiently impaired to require frequent medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

(63) Physician's orders--An order for DAHS that is signed and dated by a medical doctor (MD) or doctor of osteopathy (DO) who is licensed to practice medicine in the state of Texas. The physician's order must include the physician's license number.

(64) Plan of care--See definition of health assessment.

(65) Protective setting--A setting in which an individual's safety is ensured by the physical environment or personnel (staff).

(66) Registered nurse (RN)--A person currently licensed by the Board of Nurse Examiners for the State of Texas to practice professional nursing.

(67) Related support services--Provision of services to the individual [client], family member, or other caregivers that may improve their ability to assist with an individual's independence and functioning. Services include information and referral, transportation, teaching caregiver skills, respite, counseling, instruction and training, and support groups.

(68) Responsible party--Anyone the individual [client] designates as his representative.

(69) Safety--Action taken to protect from injury or loss of life due to such conditions as fire, electrical hazard, unsafe building or site conditions, and the presence of hazardous materials.

(70) Sanitation--Action taken to protect from illness, the transmission of disease, or loss of life due to unclean surroundings, the presence of disease transmitting insects or rodents, unhealthy conditions or practices in the preparation of food and beverage, or the care of personal belongings.

(71) Semi-ambulatory--Mobility relying on walker, crutch, cane, other physical object, or independent use of wheelchair.

(72) Serious injury--An injury requiring emergency medical intervention or treatment by medical personnel, either at a facility or at an emergency room or medical office.

(73) Social activities--Therapeutic, educational, cultural enrichment, recreational, and social activities on site or in the community in a planned program to meet the social needs and interests of the individual.

(74) UL--Underwriters Laboratories, Inc. UL approval provides third-party certification and testing of products acceptable to DADS.

(75) Working with people--Responsible for the delivery of services to individuals either directly or indirectly. Experience as a manager would meet this definition; however, an administrative support position such as a bookkeeper does not. Experience does not have to be in a paid capacity. A person serving as a minister receiving an expense allowance in money plus free housing qualifies for experience in working with people.

This 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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Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: July 29, 2012
For further information, please call: (512) 438-3734
SUBCHAPTER H. DAY ACTIVITY AND HEALTH SERVICES (DAHS) CONTRACTUAL REQUIREMENTS

40 TAC §§98.201, 98.203 - 98.207, 98.211

STATUTORY AUTHORITY

The amendments and new sections are proposed under Texas Government Code, §§531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, Chapter 103, which provides DADS with the authority to license and regulate adult day care facilities.

The amendments and new sections affect Texas Government Code, §§531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§98.201. Eligibility Requirements for Participation.

(a) An individual applying for or receiving DAHS under §1902 of the Social Security Act [The client] must meet eligibility requirements as described in §48.2915 of this title (relating to Day Activity and Health Services under §1902 of the Social Security Act). [The physician providing the physician's order cannot be the facility owner or have a significant financial or contractual relationship with the facility.] (b) An individual applying for or receiving DAHS under §1915(i) or Title XX of the Social Security Act must meet eligibility requirements described in §48.2916 of this title (relating to Day Activity and Health Services under §1915(i) or Title XX of the Social Security Act).

(c) An individual applying for or receiving services in one of the following Medicaid waiver programs may receive DAHS in a waiver service without meeting the eligibility requirements described in §48.2915 or §48.2916 of this title:

(1) Community Based Alternatives (CBA); and
(2) Medically Dependent Children Program (MDCP).

§98.203. Referral, Authorization, and Initiation of Services Under §1902, §1915(i), or Title XX of the Social Security Act.

(a) After initial determination of an individual's eligibility for DAHS, a DADS case manager sends a written referral to a DAHS facility and the DAHS facility is selected based on the following priorities:

(1) individual's choice;
(2) physician's choice, if stated; or
(3) rotation of eligible providers.

(b) Within 14 days after the date on the written referral, the DAHS facility must:

(1) conduct a health assessment of the individual using DADS DAHS Health Assessment;
(2) develop a service plan for the individual using DADS DAHS Individual Service Plan form;
(3) obtain a physician's order for the individual using DADS Physician Orders form; and
(4) send the following to the case manager:

(A) completed DADS DAHS Health Assessment form and DAHS Individual Service Plan form; and
(B) DADS Physician Orders signed and dated by the physician.

(c) If the individual is unable to participate in the health assessment due to a cognitive impairment, the DAHS facility nurse must involve the individual's responsible party.

(d) If the DAHS facility is unable to complete the activities described in subsection (b) of this section within 14 days after the date on the written referral, the DAHS facility must describe the reason for the delay using DAHS Case Information form and submit the form to the case manager within 14 days after the date on the written referral.

(e) If the case manager determines the individual is eligible for DAHS, the case manager sends the DAHS facility a service authorization form with the individual's services begin date.

(f) The case manager notifies the individual and the DAHS facility if the individual is determined to be ineligible for DAHS.

(g) The DAHS facility must initiate the individual's services within seven days after the begin date on the service authorization form described in subsection (e) of this section.

(h) If the DAHS facility is unable to initiate services within the timeframe described in subsection (g) of this section, the DAHS facility must use DAHS Case Information form to notify the case manager:

(1) of the reason for the delay in the initiation of services; and
(2) the date when services are scheduled to begin.

§98.204. Authorization and Initiation of Services for Individuals Applying for or Receiving DAHS Through CBA or MDCP.

(a) A case manager sends a written service authorization to a DAHS facility and the DAHS facility is selected based on the following priorities:

(1) individual's choice;
(2) physician's choice, if stated; or
(3) rotation of eligible providers.

(b) Within 14 days after the date on the written service authorization, the DAHS facility nurse must:

(1) assess the individual during a face-to-face interview using DADS DAHS Health Assessment form;
(2) develop a proposed plan of care using DADS DAHS Individual Service Plan form; and
(3) obtain physician's orders if the individual service plan includes nursing services that are required to be ordered by a physician in accordance with Texas Administrative Code (TAC), Title 22, Chapter 217 (relating to Licensure, Peer Assistance and Practice).
Within two business days after completing the requirements in subsection (b) of this section, the DAHS facility must initiate the individual's services.

Within two business days after initiating the individual's services, the DAHS facility must use DADS Case Information form to notify the case manager that the services were initiated.

If the DAHS facility determines that it cannot serve the individual due to licensure requirements, the DAHS facility must, within 14 days after the date on the written service authorization, use the DADS Case Information form to:

1. notify the case manager of the determination;
2. explain the reason for the determination; and
3. provide the relevant provision in the licensure rules.

§98.205. DAHS Facility-Initiated Referrals.

(a) If an individual requests DAHS, a DAHS facility may initiate a referral as soon as it obtains oral physician's orders if the individual appears:

1. to be Medicaid eligible; and
2. based on information the DAHS facility collects using the DAHS Health Assessment form, to meet the eligibility criteria in:
   (A) §48.2915 of this title (relating to Day Activity and Health Services under §1902 of the Social Security Act); or
   (B) §48.2916 of this title (relating to Day Activity and Health Services under §1915(i) or Title XX of the Social Security Act).

(b) A DAHS facility may not initiate a referral for an individual who is enrolled or seeking enrollment in CBA or MDCP.

(c) To initiate a referral, the DAHS facility must:

1. determine whether the individual is Medicaid eligible by reviewing the information on the individual's Medical Care Identification Card;
2. ensure the facility nurse:
   (A) conducts a health assessment using the DADS Health Assessment and DAHS Individual Service Plan forms to determine whether the individual appears to have a medical need for the service; and
   (B) obtains oral or written physician orders, if the individual appears to meet the eligibility criteria;
3. notify the case manager or intake unit of the placement day the individual contacts the DAHS facility; and
4. confirm the notification in writing within seven days after the notice described in paragraph (3) of this subsection is given, using DADS Case Information form.

The DAHS facility must request prior written approval for the individual from the case manager within 30 days after the date of the physician orders.

If the DAHS facility fails to submit prior approval forms or additional documentation within required time frames, if the additional documentation is not adequate, or if the individual is determined ineligible by the case manager, the case manager cancels the DAHS facility-initiated prior approval and the DAHS facility is not reimbursed for services.

If DADS Health Assessment, DADS Individual Service Plan form, or Physician's Order for Day Activity and Health Services form is missing, or if any of the following critical omissions or errors have occurred in the required documentation, the DAHS facility cannot obtain prior approval:

1. the nurse fails to sign or date DADS Health Assessment/Individual Service Plan form or omits the registered nurse or licensed vocational nurse credentials that should follow his signature;
2. documentation on DADS Health Assessment/Individual Service Plan form does not support the medical eligibility criteria specified in §98.201 of this title (relating to Eligibility Requirements for Participation);
3. items A, B, in Sections II and III of DADS Health Assessment/Individual Service Plan form are not completed or completed incorrectly and medical need cannot be determined;
4. DADS Physician's Order for Day Activity and Health Services form does not include the MD or DO credential of the physician who signed the form;
5. DADS Physician's Order for Day Activity and Health Services form does not include the license number of the physician who signed it;
6. the physician who signed the order is excluded from participation in Medicare or Medicaid;
7. the physician's signature is not on DADS Physician's Order for Day Activity and Health Services form;
8. the physician's signature date is missing or illegible and the DAHS facility's stamped date is missing from DADS Physician's Order for Day Activity and Health Services form; or
9. the DAHS facility's stamped date used instead of the physician's date on DADS Physician's Order for Day Activity and Health Services form does not include the provider agency's name, abbreviated name, or initials.

(g) A DAHS facility may not initiate a referral for an individual whose services will be provided through CBA or MDCP.

§98.206. Program Requirements.

(a) The DAHS facility must provide services that include the following:

1. Nursing services. Nursing services must include:
   (A) assessing, observing, evaluating, and documenting an individual's health condition, and instituting appropriate nursing intervention to stabilize or improve an individual's condition or prevent complications;
   (B) ensuring that the individual plan of care appropriately reflects the physician's orders;
   (C) [C] assisting the individual to order, maintain, or administer prescribed medications or treatments, as indicated by physician's orders;
   (D) [D] counseling the individual on his health need and illness and involving significant others in the discussions of his immediate and long-term health goals; and
   (E) [E] providing or supervising personal care services to enable the individual to restore, maintain, or improve his ability to perform personal care tasks. For purposes of this requirement, personal care is defined as assistance with dressing, feeding, grooming, bathing, toileting, transferring/ambulation, or assistance with self-administering medication.

2. Physical rehabilitative services. Physical rehabilitative services must include:

   (c) [C] [D] [E] [F] [G] [H] [I] [J] [K] [L] [M] [N] [O] [P] [Q] [R] [S] [T] [U] [V] [W] [X] [Y] [Z]
(A) restorative nursing; and

(B) group and individual exercises, including range of motion exercises.

(3) Nutrition/food service. Nutrition/food service in DAHS facilities is provided under 4 TAC Chapter 25 [4 TAC Chapter 378], Subchapter A, concerning the Child and Adult Care Food Program (CACFP) and must include:

(A) one hot noon meal served between the hours of 11:00 a.m. and 1:00 p.m. The meal must:

(i) be suitable in quantity and adequacy to attain and maintain nutritional requirements, including those of an individual with special needs [clients]. The CACFP staff monitor the adequacy of a meal by totaling the amount of food produced and cooked by the number of adults fed to determine if the average amount of food meet the following food components: two ounces of meat, 1/2 cup of fruit/vegetables, one cup of milk, and two servings of bread; and

(ii) supply 1/3 of the recommended daily allowance for adults as recommended by the United States Department of Agriculture;

(B) special diets as required by the individual's [client's] plan of care;

(C) a supplementary mid-morning and mid-afternoon snack;

(D) dietary counseling and nutrition education for the individual [client] and [his] family; and

(E) assisting the individual [client] with his meals if necessary. This includes:

(i) food texture modification, including grinding meats and mashing vegetables for an individual [clients] having trouble chewing; and

(ii) food management, including spoon feeding, bread buttering, and milk opening for an individual [clients] with hand deformities, paralysis, or hand tremors.

(4) Other supportive services [in DAHS facilities]. Other supportive services must include:

(A) community interaction, cultural enrichment, educational or recreational activities, and other social activities on site or in the community in a planned program to meet an individual's [the] social needs and interests [of the clients];

(B) providing at least three social activities per day; and

(C) posting a monthly activity calendar at least one week in advance.

(5) Transportation services [in DAHS facilities].

(A) Transportation services must include:

(i) transportation to and from the DAHS facility; and

(ii) transportation to and from a DAHS facility approved to provide therapies, if an individual [the client] requires specialized services on days of attendance at the day activity and health services DAHS facility.

(B) If the DAHS facility provides transportation for an individual [a client] to a non-therapy medical DAHS facility, the DAHS facility can claim the time spent in transport as part of the unit of services.

(C) If the DAHS facility does not provide transportation, the DAHS facility must coordinate transportation with other resources.

(D) Vehicles used for transportation services must:

(i) be properly operated and maintained in accordance with state law;

(ii) have current inspection and registration;

(iii) [and] have proper heating and cooling systems to maintain reasonable temperature levels inside the vehicle[.]

(iv) have working seatbelts for each individual unless the vehicle was manufactured without seatbelts;

(v) have a method to secure a wheelchair to ensure an individual's safety during transit; and

(vi) if equipped with a wheelchair lift, have a properly operated and maintained lift.

(b) Annually, the DAHS facility must obtain, and send to the DADS case manager, physician orders for an individual that:

(1) outline the care, monitoring, or intervention by a licensed vocational nurse or registered nurse; and

(2) include the physician's dated signature.

§98.207. Suspension and Termination of Day Activity and Health Services.

(a) A [The] DAHS facility must suspend services before the end of the prior approval period if [one or more of the circumstances specified in paragraphs (1) - (10) of this subsection occur]:

(1) the individual temporarily [client] leaves the state or moves outside the geographic area served by the DAHS facility;

(2) the client dies;

(3) the individual [client] is temporarily admitted to a hospital, nursing home, state supported living center [school], or state hospital;

(4) the client requests that services end;

(5) the physician requests that services end;

(6) the Health and Human Services Commission (HHSC) denies the client's Medicaid/Title XX eligibility;

(7) DADS enforces sanctions against the DAHS facility by terminating the contract;

(8) the individual [client] threatens the health and safety of himself or others; and

(9) the individual [client] is absent from the DAHS facility for 15 consecutive days.

(10) the client becomes ineligible for Medicaid. Each month the DAHS facility must verify that a client has a current HHSC Medical Care Identification Card.

(b) The DAHS facility must notify the DADS case manager so services can be terminated if:

(1) the individual dies;

(2) the individual permanently leaves the state or moves outside the geographic area served by the DAHS facility;

(3) the individual is permanently living in a nursing facility, state supported living center or state hospital;

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(4) the individual requests that services end;
(5) the physician requests that services end;
(6) the individual’s Medicaid eligibility is denied; or
(7) DADS enforces sanctions against the facility by terminating the contract.

(c) [Repealed.] No later than the first DADS workday after services are suspended, the DAHS facility must verbally notify the DADS case manager [caseworker or staff in the caseworker’s office] about the reason the DAHS facility suspended services. Written notification on DADS’ Case Information form must be sent to the caseworker within seven workdays after the incident that was reported verbally.

(d) For a Medicaid eligible individual, the DAHS facility must verify monthly that the individual remains Medicaid eligible. DADS does not reimburse the DAHS facility for units provided to an individual whose Medicaid eligibility had lapsed at the time services were delivered.

§98.211. Billing and Payment.

(a) The method of payment is a unit of authorized service and is defined as half a day. One unit of service constitutes three hours but less than six hours of covered services provided by the DAHS facility. Six hours or more of service constitutes two units of service. Time spent in approved transportation provided by the DAHS facility shall be counted in the unit of service.

(b) The DAHS facility is not entitled to payment if:

(1) the DAHS facility fails to submit prior approval forms or supporting documentation to the case manager [regional nurse] within the required time frames for DAHS facility-initiated referrals;

(2) the DAHS facility did not maintain the [staff-client] ratio of staff to individuals for one or more days;

(3) the DAHS facility exceeded its license capacity; [or]

(4) the DAHS facility’s monthly claims do not correspond to the DAHS facility’s service authorizations and DADS [DADS] Daily Attendance/Daily Transportation Record form; or;

(5) the physician who provides the order is a facility owner or has a significant financial or contractual relationship with the facility.

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

Filed with the Office of the Secretary of State on June 15, 2012.

TRD-201203168
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: July 29, 2012
For further information, please call: (512) 438-3734

TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 215, Subchapter C, §215.82, Administration of Licensing Fees; §215.83, Renewal of Licenses; and §215.86, Processing of License Applications, Amendments, or Renewals; and Subchapter D, §215.112, Motor Home Show Limitations and Restrictions.

EXPLANATION OF PROPOSED AMENDMENTS

The proposed rule amendments implement Senate Bill 1733 and House Bill 2872, 82nd Legislature, Regular Session, 2011; reflect changes in the Motor Vehicle Division's application process practices; and provide for efficient processing of applications for licenses, renewals, and amendments.

Amendments to §215.82, Administration of Licensing Fees, are proposed to delete the rule provision that is duplicative of Occupations Code §2301.264(f) requiring $50 as the fee for a duplicate license. Amendments to §215.82 are also proposed for consistency with Occupations Code §2301.264(d) requiring
that a refund of an amount that is not due or that exceeds the amount due is to be made from funds appropriated to the board for the purpose of refunds. Rule requirements under existing §215.82(b)(1) and (2) are proposed as new §215.82(a). New §215.82(b) is proposed to implement Occupations Code, §§55.002 by protecting an active member of the armed forces from increased fee or penalty for failing to timely renew a license because the individual was on active duty in the United States armed forces serving outside of Texas.

Amendments to §215.83, Renewal of Licenses, are extensive. Amendments to §215.83(a) are proposed to emphasize that a licensee must submit a timely and sufficient renewal application to the division before the expiration of the license. The licensee's failure to receive notice or the department's failure to provide notice of impending license expiration does not relieve the licensee from the responsibility to timely renew in accordance with the statutory requirements. The provisions of existing §215.83(b) are proposed to be amended and moved to §215.83(i) while retaining the 90-day grace period during which a late license renewal application may be filed with accompanying fees. New §215.83(b) is proposed to clarify that a renewal application is sufficient if the renewal form is completed by the licensee or certain authorized representatives, includes the required renewal fee and is accompanied by proof of a surety bond, if required. New §215.83(c) is proposed to indicate that a license renewal application is timely if it is received or postmarked before the license expiration date.

Proposed new §215.83(d) states that a timely and sufficient renewal application will be accepted for processing; however, the filing of a timely and sufficient renewal application does not automatically result in the issuance of a license. Rather, the Motor Vehicle Division will review the renewal application and determine whether to approve or deny the application for issuance of a license. New §215.83(e) is proposed for consistency with the Administrative Procedure Act, Government Code, §2001.054. New §215.83(f) is proposed to clarify that if a licensee fails to file a sufficient application before the expiration of the existing license, then a person may not continue to engage in those business activities requiring a license. New §215.83(g) is proposed to clarify that the expiration date of license plates that are issued in accordance with Transportation Code, Chapter 503, Subchapter C is intrinsically tied to the expiration of the associated license issued by the department's Motor Vehicle Division. Therefore, the plates expire the later of two events, either upon expiration of the license associated with the plates or, if the licensee filed a timely and sufficient license renewal application, then upon the determination whether to issue or deny the license renewal application. New §215.83(h) is proposed to provide the opportunity to demonstrate to the division that it complied with all license renewal requirements and that the licensee filed a sufficient and timely license renewal application. The entity is afforded 10 calendar days from the date the division issues a notice informing the entity that no renewal application was received by the division.

New §215.83(i) is based upon existing §215.83(b). New §215.83(i) is proposed to clarify that the department affords a grace period of 90 days during which the entity may still file a late renewal application. The 90-day grace period applies only to the filing of the license renewal application and not the activities authorized by the valid license. Once the existing license expires, the applicant no longer holds a valid license; therefore, the applicant may not continue to engage in business activities for which a license is required. In other words, because no timely and sufficient renewal application was filed before the expiration of the existing license, that entity is not authorized to engage in activities requiring a license, even during the 90-day grace period. The entity may file a license renewal application during the 90-day grace period. The applicant must also pay the associated application fee. In addition, a penalty fee is assessed. The proposed subsection clarifies that the applicant may not resume business activities for which a license is required until the applicant receives from the division a written verification that the license has been issued or receives the actual license.

New §215.83(j) is proposed to clarify that if the Motor Vehicle Division has not received a renewal application within 90 days of the expiration of a license, the division will close the license and that license may not be renewed. Instead, the entity must apply for and receive a new license before engaging in any business activities for which a license is required. However, that entity should realize that because no timely and sufficient renewal application was filed before the expiration of the existing license, that entity will not have been authorized to engage in activities requiring a license since the date the license expired.

Amendments to §215.86, Processing of License Applications, Renewals, or Renewals, are proposed to reflect the logistical and process changes being made by the Motor Vehicle Division to its review of applications. Amendments to §215.86(a) and §215.86(c) are propose to allow an employee or an unpaid agent of the applicant to file an application or renewal application. Similar to attorneys or accountants, an employee or an agent of the applicant or licensee may be required to demonstrate proof of authority to act on behalf of the applicant or licensee. License purveyors are still prohibited from applying for a license on behalf of another entity or from gaining information by telephone relevant to a pending application. New §215.86(d) is proposed to clarify license processing procedures. The department intends for staff to informally communicate by telephone and e-mail to request materials and information necessary to continue processing an application. However, division staff may also issue a written notice of deficiency to the applicant. The proposed new subsection clarifies that the applicant will be afforded 20 calendar days to respond to a written notice of deficiency and to supply all requested documentation or information. The proposed new subsection allows for an extension of time only if granted in writing so that only for unforeseeable or extenuating circumstances would the 20-day period be extended. If the applicant does not respond to staff or does not provide the information or documents within 20 days of the date of the written notice of deficiency, then the processing of the application will continue, the application will be deemed withdrawn and will be administratively closed. New §215.86(e) is proposed to further clarify license processing procedures. The department's evaluation of a complete application will determine approval or denial of the application. In cases where the department determines the application should be denied, a petition and notice of hearing to be held before the State Office of Administrative Hearings will be issued and sent to the applicant in accordance with Texas Occupations Code §2301.651(d) and the Texas Administrative Procedure Act. The department also allows the applicant to voluntarily withdraw its application prior to the issuance of a final order, so that the applicant is afforded an opportunity to correct the application deficiencies and reapply without having been previously denied a license. New §215.86(f) is proposed to implement Senate Bill 1733, which amended Occupations Code §55.004 by requiring expedited licensing processing for an applicant who is

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the spouse of a person serving on active duty as a member of the armed forces of the United States.

Amendments to §215.112, Motor Home Show Limitations and Restrictions, are proposed for clarification and implementation of House Bill 2872, which amended Transportation Code, Chapter 728, Subchapter A (the Texas Blue Law). An amendment to §215.112(c) is proposed to delete the word "other" to eliminate ambiguity. Additional amendments to §215.112(c) are proposed to clarify that the term "coordinator/promoter" means "promoter or coordinator." Amendments to §215.112(e) are proposed to replace the term "day" with "Saturday or Sunday" to expressly state that the non-selling day designated by the motor home show promoter or coordinator for compliance with the Texas Blue Law will be on a Saturday or a Sunday, rather than on any other day of the week. Additional amendments to §215.112(e) are proposed to clarify that the reference to "Blue Law" means the prohibition of sales on a consecutive Saturday and Sunday in accordance with the requirements of Transportation Code, Chapter 728, Subchapter A. Amendments to §215.112(e) are also proposed to implement new Transportation Code §728.002(d), which was promulgated by House Bill 2872. The motor vehicles to which the Transportation Code §728.002 prohibition applies include a motor home or a tow truck. However, the new statutory provision at Transportation Code §728.002(d) clarifies that the section does not prohibit the quoting of a price for a motor home, tow truck, or towable recreational vehicle at a show or exhibition. In response to numerous inquiries received by the Motor Vehicle Division, amendments to §215.112(e) are proposed to clarify the activities in which a motor home dealer may engage on a consecutive Saturday and Sunday during a show or exhibition. As the term "motor vehicle" is defined under Transportation Code §728.001(2), no prohibition exists against sale of towable recreational vehicles on a consecutive Saturday and Sunday. Therefore, no new rule or rule amendment is proposed at this time regarding the quoting of a price for a towable recreational vehicle. However, the prohibition on sale or offer to sell motor vehicles on a consecutive Saturday and Sunday still applies to motor vehicles as defined in Transportation Code §728.001(2), including tow trucks, ambulances, fire fighting vehicles, and traditional self-propelled motor vehicles of two or more wheels designed to transport a person or property. Although new Transportation Code §728.002(d) does not prohibit the quoting of a price for a tow truck on a consecutive Saturday and Sunday at a show or exhibition under Occupations Code §2301.358, no rule amendment or new rule is proposed at this time.

FISCAL NOTE

Linda Flores, Chief Financial Officer, has determined that for each year 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.

William P. Harbeson, Interim Director of the Motor Vehicle Division, has certified that there will be no significant impact on state economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Harbeson 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 the increased efficiency of the processing of applications for licenses, renewal licenses, and license amendments. 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 or individuals.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Michelle Lingo, Staff Attorney, Motor Vehicle Division by email to MVD_Exchange@TxDMV.gov. Please write "License Administration Rule" in the subject line of the email. Although we strongly encourage all comments to be submitted in electronic format through the referenced email address, comments may also be submitted by writing to Texas Department of Motor Vehicles, Attention: Motor Vehicle Division-License Administration Rule, 4000 Jackson Avenue, Austin, Texas 78731. The deadline for receipt of comments is 5:00 p.m. on July 30, 2012.

SUBCHAPTER C. LICENSES, GENERALLY

43 TAC §§215.82, 215.83, 215.86

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §503.002; Transportation Code, §1002.001; and Occupations Code, §2301.155; which provide the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE


§215.82. Administration of Licensing Fees.

(a) A request for a duplicate license must be made on a division-approved form, stating the reason for the duplicate license and accompanied by the required duplicate license fee. The licensee may request one duplicate license at no charge if the licensee did not receive the original license and makes the request within 45 days of the time the license was mailed to the licensee.

(b) A licensee that fails to renew the license in a timely manner because the person was on active duty in the United States armed forces and serving outside Texas shall be exempt from any increased fee or penalty imposed by the department for failing to renew the license in a timely manner.

[(a) When a license is voluntarily or involuntarily cancelled by the Board, no refund of fees will be made.]  
[(b) The division shall charge a processing fee of $50 for each duplicate license issued to any licensee.]  
[(c) A request for a duplicate license must be made on a form prescribed by the division and state the reason a duplicate license is needed.]  
[(d) A licensee may request one duplicate license at no charge if the licensee did not receive the original license and makes the request within 45 days of the time the license was mailed to the licensee.]  
[(e) Prior to the issuance of a license, an applicant may withdraw its application and, upon written request, receive a refund of the application fees.]  
[(d) Should an applicant fail to submit a complete new or amendment application not later than 180 days after the initial sub-}
mission, the department may retain any monies paid by the applicant as earned fees. The 180-day time period may be tolled by the division for good cause.

(ce) Should a licensee fail to submit a complete renewal application not later than 90 days after the expiration of its prior license, the department may retain any monies paid by the licensee as earned fees.

§215.83. Renewal of Licenses.

(a) Prior to the expiration of its existing license, a licensee must file with the division a sufficient license renewal application on a form approved by the division. Failure to receive notice of license expiration from the department does not relieve the licensee from the responsibility to timely renew.

(b) A license renewal application received by the division is sufficient if:

1. The renewal application form is completed by the licensee or authorized representative of the licensee who is an employee, an unpaid agent, a licensed attorney, or certified public accountant;

2. Accompanied by the required license renewal application fee payment; and

3. Accompanied by proof of a surety bond, if required.

(c) A license renewal application is timely filed if:

1. The sufficient license renewal application is received by the division on or before the license expiration date; or

2. A legible postmark on the envelope transmitting the license renewal application clearly indicates that the renewal application was mailed on or before the license expiration date.

(d) A timely and sufficient application shall be accepted for processing. The division will review the application and make a final determination whether to approve or deny the application.

(e) A licensee that submits a timely and sufficient license renewal application may continue to operate under the expired license until the renewal application is finally determined.

(f) A licensee who fails to file a timely and sufficient license renewal application is not authorized to continue licensed activities.

(g) License plates issued pursuant to Transportation Code Chapter 503, Subchapter C expire upon the date the associated license expires or when a timely and sufficient license renewal application is finally determined, whichever is later.

(h) A licensee may rebut a determination that a renewal application was not timely or sufficient by submitting evidence to the division demonstrating the renewal application was timely and sufficient. Such evidence must be received by the division within ten (10) calendar days of the date the division issues notice that a timely or sufficient license renewal application was not received by the division.

(i) A late license renewal application may be filed up to 90 days after the license expiration date; however, the applicant is not authorized to continue licensed activities after the license expiration date until the division approves the late renewal application. If the renewal license is granted under this subsection, the licensing period begins on the date the license is issued and the licensee may resume licensed activities upon receipt of the division's written verification or the license.

(j) If the division has not received a late license renewal application within 90 days after the license expiration date, the division will close the license. The entity must apply for and receive a new license before the entity is authorized to resume activities requiring a license.

[ca] A licensee must file a complete renewal application prior to the expiration of its existing license.

[cb] If the licensee has not submitted to the division a renewal application with all required information and applicable fees within 90 days after license expiration, including late fees as provided by Occupations Code, §2301.264(b), the licensee must apply for a new license.

§215.86. Processing of License Applications, Amendments, or Renewals.

(a) Any application for a license, amendment of a license, or renewal of a license issued by the division must conform to the procedures set out in paragraphs (1) and (2) of this subsection.

1. An application for a license, an amendment of a license, or a renewal of license will be processed only if filed by:

   A. the applicant;

   B. the licensee; or

   C. an authorized representative of the applicant or licensee who is an employee, an unpaid agent, a licensed attorney, or certified public accountant; and

2. Application, amendment, or renewal fees paid by check, credit or debit card, or electronic transfer, must be drawn from an account held by the applicant, licensee, or from a trust account of the applicant's [designated] attorney or certified public accountant.

(b) Information concerning the status of an application, application deficiencies, or new license numbers will not be provided telephonically to license purveyors.

(c) An authorized representative of the applicant or licensee that files an application with the division may be required to provide written proof of authority to act on behalf of an applicant or licensee.

(d) An application for a license, amendment, or renewal of license filed with the division must be complete. To be complete, an application must include all information and documentation required by the department. If the applicant or licensee does not provide the required information or documentation, the division will issue a written notice of deficiency. The division must receive the information or documentation not later than 20 calendar days from the issuance of a written notice of deficiency, unless the division issues a written extension of time. If the applicant fails to respond or fails to fully comply with all deficiencies listed in the written notice of deficiency within this time period, the processing of the application will be deemed withdrawn and the application will be administratively closed.

(e) Once the department receives a complete application for a new license, amendment, or renewal of license, the department will evaluate the application with applicable rules and statutes to determine approval or denial. If it is determined that there are grounds for denial of the application, a petition and notice of hearing to be held before the State Office of Administrative Hearings will be issued and sent to the applicant. The applicant may withdraw the application prior to the issuance of a final order.

(f) The division will give preference to the order of processing a license, amendment, or renewal application submitted for licensing of a military spouse upon the applicant's notification to the division of qualification under Occupations Code §55.004.
§503.002; 374834

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dealer:
June
2012.
TRD-201203143
Brett Bray
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: July 29, 2012
For further information, please call: (512) 467-3853

SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS
43 TAC §215.112
STATUTORY AUTHORITY
The amendments are proposed under Transportation Code, §503.002; Transportation Code, §1002.001; and Occupations Code, §2301.155; which provide the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

(a) A dealer licensed by the division who is authorized to sell new motor homes may attend and sell at any motor home show that has been approved by the division.
(b) The scope of this rule is expressly limited to new motor home shows and exhibitions. It does not apply to other types of motor vehicle distribution activities, static displays, or any other provision of Occupations Code, Chapter 2301 other than §2301.355 and §2301.358. Other motor vehicle shows, exhibitions, or static displays will be reviewed by division staff on a case by case basis.
(c) Approval must be sought by the show promoter or coordinator [coordinator/promoter] no less than 30 days and no more than 90 days prior to the proposed show date. All applications for motor home shows must be submitted on the forms and in the manner prescribed by the division, and must be accompanied by all [other] required attachments. If the promoter or coordinator [coordinator/promoter] is not a licensee, [or] an association of licensees, or organization of licensees, the application must be accompanied by a $25,000 surety bond to assure compliance with Occupations Code, Chapter 2301 and department rules, as well as other regulations pertaining to the sale of new motor vehicles.
(d) There must be at least three dealers participating in the show, representing at least three different line-makes at the show, for the show to qualify for approval. Each participating new motor vehicle dealer must have a current, valid, Texas new motor vehicle dealer's license to sell the particular line of motor home to be shown.
(e) The duration of any motor home show shall not exceed six consecutive days. If a show is conducted [extends] over a consecutive Saturday and a Sunday, sales will be suspended by all motor vehicle dealers on the same Saturday or Sunday [day] to achieve uniform compliance with the Blue Law under Transportation Code, Chapter 728, Subchapter A. On the day sales are suspended, a motor home dealer:[

1. may quote a price and discuss finance options;
2. may not sell, offer to sell, negotiate a price, or enter into a contract or letter of intention to contract for the sale of the product;
3. may open and attend to the motor home product;
4. is not required to remove or cover the suggested retail price the manufacturer may have affixed to the motor home.

(f) No motor home show shall occur in a county within 90 days of a previous motor home show within that county. Upon a showing of good cause, the division may authorize additional motor home shows in any county. Any motor home dealer may attend a motor home show so long as no like line dealership is located within 70 miles of the show site, unless a written waiver is obtained from the like line dealer or dealers located within 70 miles of the show site. Any like line dealer within 70 miles of the show site has a superior and exclusive right to represent that line at the proposed show. If there are two or more like line dealers located within 70 miles of the show site, each has equal right to participate in the proposed show. This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on June 15, 2012.
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Brett Bray
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: July 29, 2012
For further information, please call: (512) 467-3853

CHAPTER 217. VEHICLE TITLES AND REGISTRATION
The Texas Department of Motor Vehicles (department) proposes amendments to Subchapter A, §217.3, Vehicle Titles, and Subchapter B, §217.22, Motor Vehicle Registration, both relating to Vehicle Titles and Registration. The previously published proposed amendments in the May 18, 2012, issue of the Texas Register (37 TexReg 3708) are withdrawn and simultaneously republished with additional amendments for consideration and public comment.

EXPLANATION OF PROPOSED AMENDMENTS
The proposed amendments are necessary to comply with the requirements of House Bill 2357, 82nd Legislature, Regular Session, 2011, which reorganized Transportation Code, Chapters 501, 502, 504, and 520, the motor vehicle statutes, including updating them to reflect automation capability in systems and payment. Many contain amendments that update citation changes made due to the reorganization. Throughout the rules "certifi-

37 TexReg 4834 June 29, 2012 Texas Register
cate of title” has been replaced with “title” in accordance with HB 2357 simplification.

In addition, HB 1674, 82nd Legislature, Regular Session, 2011, allows registration renewal to be denied if a child support agency gives the department notice that the obligor failed to pay child support. This changed from the requirement that the department had to be given a final order. The amendments are also necessary to comply with the requirements of House Bill 2017, 82nd Legislature, Regular Session, 2011, which authorizes the department to require identification for titling and initial registration services.

Section 217.3(a)(1) is modified to delete the reference to a motorcycle, motor-driven cycle, or moped designed for or used exclusively on golf courses because these vehicle were removed from the definition of §501.002(17)(E) by HB 2357. Subsection (a)(1)(D) requiring motors installed on bicycles to be certified by the Department of Public Safety (DPS) was removed because DPS does not certify them as a moped.

The definition of “neighborhood electric vehicle” is removed from subsection (a)(3) because it is defined in Transportation Code, §§551.301. New paragraph (6) states the department will not title a vehicle that does not have a body, motor, and frame manufactured by a motor vehicle manufacturer, with the exception of a trailer as defined in Transportation Code, §§501.002. This is to clarify that only motor vehicles with manufactured major component parts will be titled in order to protect public safety.

Subsection (b)(1)(C) is added to comply with §501.145(c) allowing a member of the military serving on active duty to be able to apply for title no later than the 60th day after assignment of ownership.

Section 217.3(c)(1)(A) allows the department, rather than the division director, to prescribe the manufacturer’s certificate of origin form in order to delegate this duty.

New §217.3(c)(6) provides that an application for title is not acceptable unless the applicant presents a current photo identification of the owner containing a unique identification number and expiration date. The identification document must be a driver’s license or state identification certificate issued by a state or territory of the United States, United States or foreign passport, United States military identification card, North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement, or United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State identification document. These identification documents are the same as those for existing identification necessary for a certified copy of a title, except that all owners must present identification to obtain a certified copy, but only one owner need submit identification to obtain the original title. A certified copy of a title is a duplicate title. By obtaining identification for all owners on the application for a certified copy, then all owners understand that there is a possibility that two titles exist. Within this subsection, "current" is defined as not to exceed 12 months of the expiration date. A person who holds a general distinguishing number issued under Chapter 503 of the Transportation Code or Chapter 2301, Occupations Code, is not required to submit the owner’s identification but must retain a copy of the owner’s current photo identification in the purchase and sales records as required under §215.144. These files are auditable.

Section 217.3(e)(2) deletes the requirement that certain requests for certified copies must be made by mail. Section 217.3(g) is amended to update citations and provide for a $15 administrative fee and appraisal process in accordance with HB 2357. For vehicles that are 25 years or older, the department will not accept an appraisal that is less than $4000. An out-of-state vehicle may have its vehicle identification number verified by a law enforcement officer, or a department Regional Service Center in addition to a Texas license inspection station in order to broaden the way to obtain that documentation. The form will be prescribed by the department. The remainder of subsection (g) is deleted as it repeats the statutory language of Transportation Code, §501.051. Under HB 2357, the expired bonds no longer need to be returned to the title owner as expired bonds do not have value.

In accordance with HB 2357, a new procedure is provided in subsection (h) that can be utilized when all parties agree to rescind a new vehicle sales transaction. Currently, even if all parties agree to rescind the sale, a court order must be sought. The department may rescind, cancel, or revoke an application for a title if a signed, notarized affidavit is presented within 21 days of initial sale containing: a statement that the vehicle involved was a new motor vehicle in the process of a first sale; a statement that the dealer, the applicant, and any lienholder have canceled the sale; a statement as to whether the vehicle was in possession of the title applicant; and an odometer disclosure statement if appropriate. The 21 day time period was chosen as adequate time to prepare and submit the affidavits. Furthermore, the time frame accommodates denial of rescission if the vehicle has had an owner for a significant length of time.

Following this procedure does not negate the fact that the vehicle has been subject to a previous retail sale. If the vehicle was in the possession of the title applicant, then the dealer shall disclose to the subsequent purchaser that the vehicle was subject to a prior retail sale and the effect, if any, the prior retail sale has on the warranty coverage of the vehicle. A copy of the written disclosure shall be provided to the subsequent purchaser and the dealer shall maintain a copy in the sales file of the motor vehicle.

Amendments to §217.22(b)(4)(C)(ii) allow a registration receipt that is not more than six months past the date of expiration to be used as accompanying documentation to support a registration application. This broadens the types of verifiable documentation that can be used.

Amendments to §217.22(b)(5) require the same identification as §217.3(c)(6), regarding application for titles, to apply for initial registration.

The amendments to subsection (c) require that a motor vehicle must display two license plates, one at the exterior front and one at the exterior rear of the vehicle that are securely fastened at the exterior front and rear of the vehicle in a horizontal position of not less than 12 inches from the ground, measuring from the bottom, except that a vehicle described by Transportation Code, §621.2061 may have its rear plate placed so that it is clearly visible. However, if the vehicle is a road tractor, motorcycle, trailer or semitrailer, the vehicle must display one plate that is securely fastened at, or as closely practical to, the exterior rear of the vehicle in a position not less than 12 inches from the ground, measuring from the bottom. Subsection (d)(6) is amended to comply with HB 1674 which allows a child support agency to give the department notice of a child support delinquency in order for a denial flag to be placed on the registration renewal. Previously, a final order was required. Transportation Code, §502.045, requires the department to adopt a list of evidentiary items sufficient to establish good reason for delinquent registration. The
amendments to subsection (d) establish that valid reasons may include extensive repairs, being out of the country, using the vehicle only for seasonal use, military service, and storage of the vehicle, a medical condition such as an extended hospital stay; and any other reason submitted with evidence that the tax assessor collector determines is valid. Evidence of a valid reason may include receipts, passport dates, and military orders.

FISCAL NOTE

Linda Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Currently, the department is not reimbursed for costs associated with applications for bonded titles. The new $15 fee is calculated to be revenue neutral. The department processed approximately 38,000 bonded titles in Fiscal Year 2011 and the projection for bonded titles is approximately 47,000 for Fiscal Year 2012. The approximate time to process a bonded title is approximately 35 minutes. The proposed fee will cover the costs of the transaction. Since the department was absorbing this cost, it will not expend approximately $235,000 the remainder of the fiscal year.

The amendments regarding identification documents will have an overall positive fiscal impact on the state.

The e-title system reaches a breakeven point in 2016 and creates a net positive impact to the state and public of $41 million by 2017. The positive net cumulative effect will be $274 million by 2017 when the reduction in the number of unlicensed driver accidents is considered. The $274 million does not take into consideration the decrease in fraud related to titling of vehicles as this could not be quantified due to lack of data.

Randy Elliston, Director, Vehicle Titles and Registration 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. Elliston 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 is to streamline procedures for titling and registration of motor vehicles. An additional benefit will be to clarify the department's use of identification as a tool to prevent fraud in obtaining titles, registration and records.

There is an anticipated economic costs for persons required to comply with the $15 administrative fee for a bonded title application.

Texas Government Code, §2006.002, requires a state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses to project the economic impact of the rule, and describe alternative methods of achieving the purpose of the proposed rule. Before adopting a rule that would have an adverse economic effect on small businesses or micro-businesses, a state agency must prepare a statement of the effect of the rule on small businesses and micro-businesses, which must include an analysis of the cost of compliance with the rule for small businesses and micro-businesses and a comparison of that cost with the cost of compliance for the largest businesses. For each year of first five years the section is in effect, there will be some fiscal implications to business that qualify as small or micro-businesses, or persons as a result of enforcing or administering the section as proposed, including large businesses. A small business is a business that has fewer than 100 employees or less than $6 million in annual gross receipts. A micro-business has fewer than 20 employees.

The department does not maintain data of a nature that would allow the categorization of a particular licensee under Government Code, Chapter 2006. The Comptroller's website contains information that would estimate that 82% of the 14,752 businesses or individuals issued general distinguishing numbers would be categorized as small businesses. The overwhelming majority of licensees would have 20 or fewer employees and would be categorized as "micro-businesses." Since all used automotive businesses will be affected regardless of size, for the purposes of this impact statement and flexibility analysis, the distinction between "small business" and "micro-business" under Government Code, Chapter 2006 would not matter. The total impact to the industry will be considered.

The impacts to the used automotive industry is a negative impact of approximately $90 million per year which represents a loss of approximately 1% of profits to the $46 billion a year industry. This is not a conservative estimate as it was made using the highest population sample to calculate impacts and assuming that every undocumented individual over the age of 16 is a vehicle owner and that 20% of that segment of the population replaces their motor vehicle every year.

An alternative to the identification amendments would be to accept other photo identification such as library cards, employee identification cards, or other identification issued by government entities. Other forms of identification were not selected because they are not maintained in verifiable databases available to department employees or law enforcement officials, do not contain security features that are difficult to duplicate, do not contain an expiration date, or are not secure because they are issued upon the presentation of documents that are not secure.

Another alternative would be to not require identification. This alternative was not selected because identification is essential to electronic titles (e-titles) and e-titles are central to the effort to modernize the agency processes. E-titles will eliminate the need for paper titles and create electronic records of vehicle ownership. United States photo identification was the basis for approval received from the National Highway Traffic Safety Administration (NHTSA) to accept electronic signatures in lieu of original signatures for federally required odometer statements. Without the ability to capture an electronic signature, the department cannot process a paperless title transfer.

Requiring identification not only enables the e-title system, but it protects the integrity of the title and motor vehicle ownership data; deters fraudulent motor vehicle sales, transfers and loans; validates correct vehicle ownership, helps resolve ownership disputes, and clarifies "same name" issues.

Foreign nationals who return with the motor vehicle to their home country are not considered in the impact calculations because no identification is necessary if the motor vehicles are not titled and registered in Texas.

The 2010 census is designed to count "every resident." It counted 25.1 million people residing in Texas, including undocumented individuals. The United States Department of Homeland Security (DHS) which used data from the American Community Survey conducted by the Census Bureau established that there were 1.79 million undocumented individuals residing in Texas. In 2010, the undocumented population consisted of
approximately 7.1% of the population of Texas. Using a three year average of 1.10% growth for the years 2008-2010, the undocumented individual population is estimated at 1.83% for 2013, 1.85% for 2014, 1.87% for 2015, 1.89% for 2016, and 1.91% for 2017. DHS counts an unauthorized individual as someone with an "expired" status. However, the rules define "current" as not to exceed 12 months of expiration, so the actual percentages will be lower.

A person cannot legally drive until that person reaches the age of 16. The Census Bureau reports that in 2010 there were 19 million people over the age of 16 in Texas which was 75.7% of the population. Using that percentage, the anticipated population would be 77.2% for 2013, 77.3% for 2014, 77.4% for 2015, 77.5% for 2016, and 77.7% for 2017. The percentage of undocumented individuals in that age group is 5.20% for 2013, 5.14% for 2014, 5.08% for 2015, 5.02% for 2016, and 5.10% for 2017.

The negative impact was based on the assumption that the identification could negatively affect sales due to a reduced demand from that population group. The calculation takes into consideration all vehicle sales, private party or retail. In 2011, 5 million titles were issued for new and used (3.5 million) vehicles. This number does not include salvage titles or certified copies of titles which are not associated with a sale. Estimates of titles were made using the 2011 figure with the 10 year average growth rate of 1.07% per year. The estimate is 5,176,189 (3,675,094 used) for 2013, 5,231,574 (3,714,417 used) for 2014, 5,287,552 (3,754,162 used) for 2015, 5,344,128 (3,794,331 used) for 2016, and 5,401,311 (3,834,931 used) for 2017.

The Comptroller of Public Accounts reported motor vehicle sales tax collection of $2.72 billion for fiscal year 2011 which calculates to $43.5 billion of vehicle sales transactions. The sales tax revenue is 61% from new vehicles and 39% from used vehicles compared to the titles issued: 29% for new vehicles and 71% for used vehicles. It is assumed that for new vehicles, the purchaser would have the identification required by the major financial institutions.

The possible profit margin range for a used vehicle retailer is 10% - 20%. Using the higher 20%, on an average retail price of $8399, the profit is $930. The impact would be $91,206,749 on used vehicle sales, $16,286,920 on sales tax revenue, $1,791,746 on title revenue, $2,755,489 on registration revenue, and $542,953 on county road and bridge fees for 2013. The impact would be $91,206,749 on used vehicle sales, $16,286,920 on sales tax revenue, $1,791,746 on title revenue, $2,755,489 on registration revenue, and $542,953 on county road and bridge fees for 2013. The impact would be $92,858,468 on used vehicle sales, $16,581,869 on sales tax revenue, $1,796,991 on title revenue, $2,763,555 on registration revenue, and $544,543 on county road and bridge fees for 2014. The impact would be $94,561,159 on used vehicle sales, $16,885,921 on sales tax revenue, $1,802,653 on title revenue, $2,772,262 on registration revenue, and $548,259 on county road and bridge fees for 2015. The impact would be $96,321,931 on used vehicle sales, $17,200,327 on sales tax revenue, $1,808,835 on title revenue, $2,781,769 on registration revenue, and $548,132 on county road and bridge fees for 2016. The impact would be $98,234,651 on used vehicle sales, $17,541,902 on sales tax revenue, $1,817,247 on title revenue, $2,794,705 on registration revenue, and $550,681 on county road and bridge fees for 2017.

The department estimates that by 2017, 80% of the titles issued will be e-titles. This will create savings to the state from: reduced outsourced labor of printing, postage, preparation and supply costs; improved workflow and business processes; and reduced error rates. The savings and benefit to the public and industry are reduced transaction costs, service delivery cycle time, and paper reporting requirements.

The design and implementation of the e-title project is estimated to be $14 million in years 2012-2014. The issuance of paper titles costs the department $7.2 million in fiscal year 2011, or $1.42 per title. If the supply costs increase 2% per year, the e-title system will allow the department to reduce costs in fiscal year 2015 by $1.6 million with a total estimated savings of $7,193,237 by 2018.

It is estimated that the average title transaction takes about 45 minutes for travel and waiting time for a dealer or a citizen to complete. Utilizing a minimum wage rate of $7.25 and assuming one quarter of one gallon of gasoline at $0.88, the costs to complete title transactions is approximately $3.2 million per year. This assumes an average time savings of 40 minutes. The estimated breakeven point for the e-titles is fiscal year 2016. The estimated annual savings by 2017 is $27 million and the cumulative benefit to the department, public and industry through 2017 is $40.6 million.

Odometer rollbacks artificially inflate the value of the vehicle. In 2002, there were approximately 452,000 cases of odometer fraud and NHTSA estimates the average cost was $2,336. An estimated 135,537 such vehicles were in service. The Department of Justice currently prosecutes odometer fraud cases using an asset value loss of $4000 per vehicle. The value of this fraud in Texas is approximately $542 million as Texas accounts for approximately 7% of the national fraud.

In 2010, Texas experienced 68,219 vehicle thefts equating to an economic loss of $635 million. For example, during a major criminal case against two title service companies, the investigators were able to obtain verifying information related to the fraudulent United States documents, but were unable to do so with the foreign documents and thus were unable to pursue prosecution. The two affected counties experienced an estimated loss of $12.1 million dollars.

Another operation of fraudulent mechanics' liens in one county uncovered an estimated loss of $3,024,164.38 to multiple financial institutions.

According to the Crash Records Information System (CRIS) maintain by the Texas Department of Transportation, the number of accidents involving an unlicensed driver in 2010 and 2011 were $41,077 and 39,265 respectively. Accidents impact the state economy through wage and productively loss, medical expenses, administrative expenses, motor vehicle damage, and employers' uninsured costs. While the identification requirement will not prevent all unlicensed drives from driving, it will act as a deterrent. A reduction rate of 10% per year is used as a conservative estimate. As accidents have been declining, a four year average adjusted for population and with declining rate of 3% was used. The savings to the State would be $190 million in 2013. Over the next 5 year period, the State would realize a cumulative benefit of $792 million.

SUBMITTAL OF COMMENTS

Written comments on the amendments may be submitted to Randy Elliston, Director, Vehicle Titles and Registration Division, Texas Department of Motor Vehicles, 4000 Jackson Avenue,
Building 1, Austin, Texas 78731. The deadline for receipt of comments is 5:00 p.m. on July 30, 2012.

SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §217.3

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department, and Transportation Code, §§501.0041, 502.0021, 504.0011, and 520.003 which provide the Board of the Texas Department of Motor Vehicles with the authority to establish rules for each respective chapter of the Transportation Code; more specifically, Transportation Code, §502.151(a), which authorizes the department to require an application be made in the manner prescribed and include the application required by the department by rule and contain a full description of the vehicle as required by department rule; and Transportation Code, §502.002(b) and §502.151(d), which authorize the department to require an applicant for registration to provide current personal identification as determined by department rule.

CROSS REFERENCE TO STATUTE


§217.3  Motor Vehicle Titles [Certificate of Title].

(a) Titles. [Certificates of title.] Unless otherwise exempted by law or this chapter, the owner of any motor vehicle that is required to be registered in accordance with Transportation Code, Chapter 502, shall apply for a Texas [certificate of] title in accordance with Transportation Code, Chapter 501.

1  Motorcycles, motor-driven cycles, and mopeds.

(A) The title requirements of a motorcycle, motor-driven cycle, and moped are the same requirements prescribed for any motor vehicle.

[(B) A motorcycle, motor-driven cycle, or moped designed for or used exclusively on golf courses is not classified as a motor vehicle and, therefore, title cannot be issued until the unit is registered.]

(B) [(C) A vehicle that meets the criteria for a moped and has been certified as a moped by the Department of Public Safety will be registered and titled as a moped. If the vehicle does not appear on the list of certified mopeds published by that agency, the vehicle will be treated as a motorcycle for title and registration purposes.

[(D) A motor installed on a bicycle must be certified by the Department of Public Safety before the vehicle may be classified as a moped.]

2  Farm vehicles.

(A) The term motor vehicle does not apply to implements of husbandry, which may not be titled.

(B) Farm tractors owned by agencies exempt from registration fees in accordance with Transportation Code, §§502.453 [§502.203], are required to be titled and registered with "Exempt" license plates issued in accordance with Transportation Code, §502.451 [§502.201].

(C) Farm tractors used as road tractors to mow rights of way or used to move commodities over the highway for hire are required to be registered and titled.

(D) Farm semitrailers with a gross weight of more than 4,000 pounds that are registered in accordance with Transportation Code, §502.146, §§504.504 may be issued a Texas [certificate of] title.

3  Neighborhood electric vehicles.

[(A) The title requirements of a neighborhood electric vehicle (NEV) are the same requirements prescribed for any motor vehicle.

[(B) A "neighborhood electric vehicle" is a motor vehicle that;

[(i) is originally manufactured to meet, and meets, the equipment requirements and safety standards established for "low speed vehicles" in Federal Motor Vehicle Safety Standard 500 (49 C.F.R. §571.500);

[(ii) is a slow moving vehicle, as defined by Transportation Code, §527.007 that is able to attain a speed of more than 20 miles per hour, but not more than 25 miles per hour in one mile on a paved, level surface;

[(iii) is a four-wheeled motor vehicle;

[(iv) is powered by electricity or alternative power sources;

[(v) has a gross vehicle weight rating (GVWR) of less than 3,000 pounds; and]

[(vii) is not a golf cart as defined in Transportation Code, §§502.001(7)].

(4) Exemptions from title. Vehicles registered with the following distinguishing license plates may not be titled under Transportation Code, Chapter 501:

(A) vehicles eligible for machinery license plates and permit license plates in accordance with Transportation Code, §502.146 [§504.504]; and

(B) vehicles eligible for farm trailer license plates in accordance with Transportation Code, §502.433 [§502.163], unless the owner chooses to title a farm semitrailer with a gross weight of more than 4,000 pounds that is registered in accordance with §502.146, as provided by Transportation Code, §501.036.

(5) Trailers, semitrailers, and house trailers. Owners of trailers and semitrailers shall apply for and receive a Texas [certificate of] title for any stand alone (full) trailer, including homemade or shop-made full trailers, or any semitrailer having a gross weight in excess of 4,000 pounds. [Farm semitrailers with a gross weight of more than 4,000 pounds that are registered in accordance with Transportation Code, §§504.504, may be issued Texas certificates of title.] House trailer-type vehicles must meet the criteria outlined in subparagraph (C) of this paragraph to be titled.

(A) In the absence of a manufacturer's rated carrying capacity for a trailer or semitrailer, the rated carrying capacity will not be less than one-third of its empty weight.

(B) Mobile office trailers, mobile oil field laboratories, and mobile oil field bunkhouses are not designed as dwellings, but are classified as commercial semitrailers and must be registered and titled as commercial semitrailers if operated on the public streets and highways.
(C) House trailer-type vehicles and camper trailers must meet the following criteria in order to be titled.

(i) A house trailer-type vehicle designed for living quarters and that is eight body feet or more in width or forty body feet or more in length (not including the hitch), is classified as a manufactured home or mobile home and is titled under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, administered by the Texas Department of Housing and Community Affairs.

(ii) A house trailer-type vehicle that is less than eight feet in width and less than forty feet in length is classified as a travel trailer and shall be registered and titled.

(iii) A camper trailer shall be titled as a house trailer and shall be registered with travel trailer license plates.

(iv) A recreational park model type trailer that is primarily designed as temporary living quarters for recreational, camping or seasonal use, is built on a single chassis, and is 400 square feet or less when measured at the largest horizontal projection when in the set up mode shall be titled as a house trailer and may be issued travel trailer license plates. If the park model type trailer exceeds one hundred two inches in width or forty feet in length, the title will include a brand to indicate that an oversize permit must be obtained to move the trailer on the public roads.

(6) Vehicules that may not be titled. The department will not title a vehicle, with the exception of a trailer as defined in Transportation Code, §501.002, that does not have a body, motor, and frame manufactured by a motor vehicle manufacturer.

(b) Initial application for [certificate of] title.

(1) Time for application. A person must apply for the [certificate of] title not later than the 30th day [within 20 working days] after the date of assignment, [receiving the transfer documents] except:

(A) that in a seller-financed sale, the [certificate of] title must be applied for not later than the 45th day after the date the motor vehicle is delivered to the purchaser; or

(B) as provided by §215.144(e) of this title (relating to Record of Sales and Inventory);[†]

(C) a member of the armed forces or a member of a reserve component of the United States, a member of the Texas National Guard or of the National Guard of another state serving on active duty, must apply not later than the 60th day after the date of assignment of ownership.

(2) Place of application. When motor vehicle ownership is transferred, a [certificate of] title application must be filed with the county tax assessor-collector in the county in which the applicant resides or in the county in which the motor vehicle was purchased or encumbered, as selected by the applicant, except:

(A) as provided by Transportation Code, Chapters 501 and 502 and by §217.63(a) of this chapter (relating to Application for Non-repairable or Salvage Vehicle Title); or

(B) if a county has been declared a disaster area, the resident may apply at the closest unaffected county if the affected county tax assessor-collector estimates the county offices will be inoperable for a protracted period.

(3) Information to be included on application. An applicant for an initial [certificate of] title must file an application on a form prescribed by the department. The form will at a minimum require the:

(A) motor vehicle description including, but not limited to, the motor vehicle's:

(i) year;

(ii) make;

(iii) model;

(iv) identification number;

(v) body style;

(vi) manufacturer's rated carrying capacity [in tons] for commercial motor vehicles; and

(vii) empty weight;

(B) license plate number, if the motor vehicle is subject to registration under Transportation Code, Chapter 502;

(C) odometer reading and brand, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements;

(D) previous owner's name and city and state of residence;

(E) name and complete address of the applicant;

(F) name and mailing address of any lienholder and the date of lien, if applicable;

(G) signature of the seller of the motor vehicle or the seller's authorized agent and the date the [certificate of] title application was signed; and

(H) signature of the applicant or the applicant's authorized agent and the date the [certificate of] title application was signed.

(4) Vehicle identification [serial] number. If no vehicle identification [serial] number is die-stamped by the manufacturer on a motor vehicle, house trailer, trailer, semitrailer, or item of equipment required to be titled, or if the vehicle identification [serial] number assigned and die-stamped by the manufacturer has been lost, removed, or obliterated, the department will on proper application, presentation of evidence of ownership, and presentation of evidence of a law enforcement physical inspection, assign a vehicle identification [serial] number to the motor vehicle, trailer, or equipment. The manufacturer's vehicle identification [serial] number or the assigned vehicle identification [serial] number will be used by the department as the major identification of the motor vehicle or trailer in the issuance of a [certificate of] title.

(5) Accompanying documentation. The [certificate of] title application must be supported by, at a minimum, the following documents:

(A) evidence of vehicle ownership, as described in subsection (c) of this section;

(B) an odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if applicable;

(C) proof of financial responsibility in the applicant's name, as required by Transportation Code, §§502.046 §§502.152, unless otherwise exempted by law;

(D) an identification certificate if required by Transportation Code, §§482.256, and Transportation Code, §501.030, and if the vehicle is being titled and registered, or registered only; and
(E) A release of any liens, provided that if any liens are not released, they will be carried forward on the new [certificate of] title application with the following limitations:

(i) A lien recorded on out-of-state evidence as described in subsection (c) of this section cannot be carried forward to a Texas title when there is a transfer of ownership, unless a release of lien or authorization from the lienholder is attached.

(ii) A lien recorded on out-of-state evidence as described in subsection (c) of this section is not required to be released when there is no transfer of ownership from an out-of-state title and the same lienholder is being recorded on the Texas application as is recorded on the out-of-state title.

(c) Evidence of motor vehicle ownership. Evidence of motor vehicle ownership properly assigned to the applicant must accompany the [certificate of] title application. Evidence must include, but is not limited to, the following documents:

(1) New motor vehicles. A manufacturer's certificate of origin assigned by the manufacturer or the manufacturer's representative or distributor to the original purchaser is required for a new motor vehicle that is sold or offered for sale.

(A) The manufacturer's certificate of origin must be in the form prescribed by the department [division director] and must contain, at a minimum, the following information:

(i) motor vehicle description including, but not limited to, the motor vehicle's year, make, model, identification number, body style and empty weight;

(ii) the manufacturer's rated carrying capacity [in tons] when the manufacturer's certificate of origin is issued to a licensed Texas motor vehicle dealer and is issued for commercial motor vehicles as that term is defined in Transportation Code, Chapter 502;

(iii) a statement identifying a motor vehicle designed by the manufacturer for off-highway use only; and

(iv) if the vehicle is a "neighborhood electric vehicle", a statement that the vehicle meets Federal Motor Vehicle Safety Standard 500 (49 C.F.R. §571.500) for low-speed vehicles.

(B) When a motor vehicle manufactured in another country is sold directly to a person other than a manufacturer's representative or distributor, the manufacturer's certificate of origin must be assigned to the purchaser by the seller.

(2) Used motor vehicles. A [certificate of] title issued by the department, a [certificate of] title issued by another state if the motor vehicle was last registered and titled in another state, or other evidence of ownership must be relinquished in support of the [certificate of] title application for any used motor vehicle. A letter of Title and Registration verification is required from a vehicle owner coming from a state that no longer titles vehicles after a certain period of time.

(3) Motor vehicles brought into the United States. An application for [certificate of] title for a motor vehicle last registered or titled in a foreign country must be supported by documents including, but not limited to, the following:

(A) the motor vehicle registration certificate or other verification issued by a foreign country reflecting the name of the applicant as the motor vehicle owner, or reflecting that legal evidence of ownership has been legally assigned to the applicant;

(B) verification of the vehicle identification number of the vehicle, on a form prescribed by the department, executed by a member of:

(i) the National Insurance Crime Bureau;

(ii) the Federal Bureau of Investigation; or

(iii) a law enforcement auto theft unit; and

(C) for motor vehicles that are less than 25 years old, proof of compliance with United States Department of Transportation (USDOT) regulations, including, but not limited to, the following documents:

(i) the original bond release letter with all attachments advising that the motor vehicle meets federal motor vehicle safety requirements or a letter issued by the USDOT, National Highway Traffic Safety Administration, verifying the issuance of the original bond release letter;

(ii) a legible copy of the motor vehicle importation form validated with an original United States Customs stamp, date, and signature as filed with the USDOT confirming the exemption from the bond release letter required in clause (i) of this subparagraph, or a copy thereof certified by United States Customs;

(iii) a verification of motor vehicle inspection by United States Customs certified on its letterhead and signed by its agent verifying that the motor vehicle complies with USDOT regulations;

(iv) a written confirmation that a physical inspection of the safety certification label has been made by the department and that the motor vehicle meets United States motor vehicle safety standards;

(v) the original bond release letter, verification thereof, or written confirmation from the previous state verifying that a bond release letter issued by the USDOT was relinquished to that jurisdiction, if the non United States standard motor vehicle was last titled or registered in another state for one year or less; or

(vi) verification from the vehicle manufacturer on its letterhead stationery.

(4) Alterations to documentation. An alteration to a registration receipt, [certificate of] title, manufacturer's certificate, or other evidence of ownership constitutes a valid reason for the rejection of any transaction to which altered evidence is attached.

(A) Altered lien information on any surrendered evidence of ownership requires a release from the original lienholder or a statement from the proper authority of the state in which the lien originated. The statement must verify the correct lien information.

(B) A strikeover that leaves any doubt about the legibility of any digit in any document will not be accepted.

(C) A corrected manufacturer's certificate of origin will be required if the manufacturer's certificate of origin contains an:

(i) incomplete or altered vehicle identification number;

(ii) alteration or strikeover of the vehicle's model year;

(iii) alteration or strikeover to the body style, or omitted body style on the manufacturer's certificate of origin; or

(iv) alteration or strikeover to the manufacturer's rated carrying capacity.
(D) A Statement of Fact may be requested to explain errors, corrections, or conditions from which doubt does or could arise concerning the legality of any instrument. A Statement of Fact will be required in all cases:

(i) in which the date of sale on an assignment has been erased or altered in any manner; or

(ii) of alteration or erasure on a Dealer's Reassignment of Title.

(5) Rights of survivorship. A signed "rights of survivorship" agreement may be executed by a natural person acting in an individual capacity in accordance with Transportation Code, §501.031.

(6) Identification required.

(A) An application for title shall not be accepted by a county tax assessor-collector unless the applicant presents a current photo identification of the owner containing a unique identification number and expiration date. The identification document must be a:

(i) driver's license or state identification certificate issued by a state or territory of the United States;

(ii) United States or foreign passport;

(iii) United States military identification card;

(iv) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement; or


(B) If the motor vehicle is titled in:

(i) more than one name, then identification of one owner must be presented;

(ii) the name of a leasing company, the identification of the lessee or lessor's employee along with a business card or authorization written on the lessor's letterhead matching the identification of the employee must be presented;

(iii) the name of a trust, then the identification of a trustee must be presented; or

(iv) the name of a business, government entity, or organization, then a business card or authorization written on letterhead must be presented matching the identification of the applicant.

(C) If a power of attorney is being used to apply for a title, then the applicant must show:

(i) identification matching the person or employee of the entity named as power of attorney;

(ii) a business card or authorization written on the letterhead of an entity named as power of attorney that matches the identification of the employee; and

(iii) identification of the owner or lienholder.

(D) Within this subsection, "current" is defined as not to exceed 12 months of expiration date.

(E) A person who holds a general distinguishing number issued under Chapter 2301, Occupations Code, is not required to submit the owner's identification to the county tax assessor-collector but must retain a copy of the owner's current photo identification in the purchase and sales records as required under §215.144 of this title (relating to Records of Sales and Inventory).

(d) Title [certificate of title] issuance.

(1) Issuance. The department or its designated agent will issue a receipt and process the application for [certificate of title] on receipt of:

(A) a completed application for [certificate of title];

(B) accompanying documentation required by subsections (b)(4) and (c) of this section;

(C) the statutory fee for a title application, unless exempt under:

(i) Transportation Code, §501.138; or

(ii) Government Code, §431.039 and copies of official military orders are presented as evidence of the applicant's active duty status and deployment orders to a hostile fire zone; and

(D) any other applicable fees.

(2) Titles. The department will issue and mail or deliver a [certificate of title] to the applicant or, in the event that there is a lien disclosed in the application, to the first lienholder.

(3) Receipt. The receipt issued at the time of application for title may be used only as evidence of title and may not be used to transfer any interest or ownership in a motor vehicle or to establish a new lien.

(e) Replacement of [certificate of title]. If a [certificate of title] is lost or destroyed, the department will issue a certified copy of the title to the owner, the lienholder, or a verified agent of the owner or lienholder in accordance with Transportation Code, Chapter 501, on proper application and payment of the appropriate fee to the department.

(1) Identification required.

(A) An owner or lienholder may not apply for a certified copy of title unless the applicant presents a current photo identification of the owner or lienholder containing a unique identification number and expiration date. The identification document must be a:

(i) driver's license or state identification certificate issued by a state or territory of the United States;

(ii) United States or foreign passport;

(iii) United States military identification card;

(iv) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement; or


(B) If the motor vehicle is titled in:

(i) more than one name, then identification of each owner must be presented;

(ii) the name of a leasing company, the identification of the lessee or lessor's employee along with a business card or authorization written on the lessor's letterhead matching the identification of the employee must be presented;

(iii) the name of a trust, then the identification of a trustee must be presented; or

(iv) the name of a business, government entity, or organization, then a business card or authorization written on letterhead must be presented matching the identification of the applicant.
(C) If a power of attorney is being used to apply for a certified copy of title, then the applicant must show:

(i) identification matching the person or employee of the entity named as power of attorney;

(ii) a business card or authorization written on the letterhead of an entity named as power of attorney that matches the identification of the employee; and

(iii) identification of the owner or lienholder.

(D) Within this subsection, "current" is defined as within six month of expiration date.

(2) Issuance. An application for a certified copy must be properly executed and supported by appropriate verifiable proof for the vehicle owner, lienholder, or agent regardless of whether the application is submitted in person or by mail.

[(A) If the applicant requests a certified copy be issued before the fourth business day following application, the application must be made in person.]

[(B) An applicant other than the vehicle owner, lienholder, or verified agent must apply for a certified copy of a certificate of title by mail.]

(3) Denial. If issuance of a certified copy is denied, the applicant may resubmit the request with the required verifiable proof or may pursue the privileges available in accordance with Transportation Code, §§501.052 and 501.053 [subsection (g)(2)(A) and (B) of this section].

(4) Certified copy designation. A certified copy of an existing [certificate of] title will be marked "Certified Copy" until ownership of the vehicle is transferred, when the words "Certified Copy" will be eliminated from the new [certificate of] title.

(5) Fees. The fee for obtaining a certified copy of a [certificate of] title is $2 if the application is submitted to the department by mail and $5.45 if the application is submitted in person for expedited processing at one of the department's regional offices.

(1) Department notification of second hand vehicle transfers. A transferor of a motor vehicle may voluntarily make written notification to the department of the sale of the vehicle, in accordance with Transportation Code, §§501.147 [§§20.023]. The written notification may be submitted to the department by mail, in person at one of the department's regional offices, or electronically through the department's Internet website.

(1) Records. On receipt of written notice of transfer from the transferor of a motor vehicle, the department will mark its records to indicate the date of transfer and will maintain a record of the information provided on the written notice of transfer.

(2) Title [Certificate of title] issuance. A [certificate of] title will not be issued in the name of a transferee until the transferee files an application for the [certificate of] title as described in this section.

(g) Bonded titles, [Suspension, revocation, or refusal to issue Certificates of Title.]

(4) Grounds for title suspension, revocation, or refusal to issue. The department will refuse issuance of a certificate of title, or having issued a certificate of title, will suspend or revoke the certificate of title if the:

[(A) application contains any false or fraudulent statement.]

[(B) applicant has failed to furnish required information requested by the department;]

[(C) applicant is not entitled to the issuance of a certificate of title under Transportation Code, Chapter 501;]

[(D) department has reasonable grounds to believe that the vehicle is a stolen or converted vehicle or that the issuance of a certificate of title would constitute a fraud against the rightful owner of a lienholder;]

[(E) registration of the vehicle stands suspended or revoked; or]

[(F) required fee has not been paid.]

(2) Contested case procedure. Any person who has an interest in a motor vehicle to which the department has refused to issue a certificate of title or has suspended or revoked the certificate of title may contest the department's decision in accordance with Transportation Code, §§501.052 and 501.053, in the following manner.

[(A) Hearing. Any person who has an interest in a motor vehicle to which the department has refused to issue a certificate of title or has suspended or revoked the certificate of title may apply for a hearing to the designated agent of the county in which the applicant resides. At the hearing the applicant and the department may submit evidence, and a ruling of the designated agent will bind both parties. An applicant wishing to appeal the ruling of the designated agent may do so to the County Court of the county in which the applicant resides.]

[(1) [(H) Application. A [Alternative to a hearing, in lieu of a hearing, any] person who has an interest in a motor vehicle to which the department has refused to issue a [certificate of] title or has suspended or revoked a [certificate of] title may file a bond with the department on a department form, [in an amount]

[(2) Value. The amount of the bond must be equal to one and one-half times the value of the vehicle as determined using the Standard Presumptive Value (SPV) from the department's website. If the SPV is not available, then a national reference guide will be used. If the value cannot be determined by either source, then the person may obtain an appraisal [by the department, and in a form prescribed by the department.].

[(A) The appraisal must be on a department form from a Texas licensed motor vehicle dealer for the categories of motor vehicles that the dealer is licensed to sell or a Texas licensed insurance adjuster who may appraise any type of motor vehicle.

[(B) The appraisal must be dated and be submitted to the county tax assessor-collector within 30 days of the purchase or assignment.

[(C) If the motor vehicle is 25 years or older, an appraisal less than $4000 will not be accepted.

[(3) Administrative Fee. The applicant must pay the department a $15 administrative fee in addition to any other required fees.

[(4) Out of state vehicles. If the applicant is a Texas resident, but the evidence indicates that the vehicle is an out of state vehicle, the vehicle identification number must be verified by a Texas licensed Safety Inspection Station, a law enforcement officer, or a department Regional Service Center on a form prescribed by the department.

[(5) Issuance. On the filing of the bond, the department may issue a [certificate of] title. The bond shall expire three years after the date it becomes effective and will be returned to the person post-]
ing bond, on expiration, unless the department has been notified of the pendency of an action to recover on the bond.]

(h) Rescission cancellation or revocation by affidavit.

(1) The department may rescind, cancel, or revoke an application for a title if a notarized affidavit is completed and presented to the department within 21 days of initial sale containing:

(A) a statement that the vehicle involved was a new motor vehicle in the process of a first sale;

(B) a statement that the dealer, the applicant, and any lienholder have canceled the sale;

(C) a statement that the vehicle:

(i) was never in possession of the title applicant; or

(ii) was in the possession of the title applicant; and

(D) the signatures of the dealer, the applicant, and any lienholder as principal to the document;

(E) an odometer disclosure statement executed by the purchaser of the motor vehicle and acknowledged by the dealer if a statement is made pursuant to subparagraph (C)(ii) of this paragraph to be used for the purpose of determining usage subsequent to sale;

(2) A rescission, cancellation, or revocation containing the statement authorized under paragraph (1)(C)(ii) of this subsection does not negate the fact that the vehicle has been subject to a previous retail sale. If the vehicle was in the possession of the title applicant, then the dealer shall disclose to the subsequent purchaser that the vehicle was subject to a prior retail sale and the effect, if any, the prior retail sale has on the warranty coverage of the vehicle. A copy of the written disclosure shall be provided to the subsequent purchaser and the dealer shall maintain a copy in the sales file of the motor vehicle.

(i) [ih] Discharge of lien. A lienholder shall provide the owner, or the owner's designee, a discharge of the lien after receipt of the final payment within the time limits specified in Transportation Code, Chapter 501. The lienholder shall submit one of the following documents:

(1) the [certificate of] title including an authorized signature in the space reserved for release of lien;

(2) a release of lien form prescribed by the department, with the form filled out to include the:

(A) [certificate of] title or document number, or a description of the motor vehicle including, but not limited to, the motor vehicle's:

(i) year;

(ii) make;

(iii) vehicle identification number; and

(iv) license plate number, if the motor vehicle is subject to registration under Transportation Code, Chapter 502;

(B) printed name of lienholder;

(C) signature of lienholder or an authorized agent;

(D) printed name of the authorized agent if the agent's signature is shown;

(E) telephone number of lienholder; and

(F) date signed by the lienholder;

(3) signed and dated correspondence submitted on company letterhead that includes:

(A) a statement that the lien has been paid;

(B) a description of the vehicle as indicated in paragraph (2)(A) of this subsection;

(C) a [certificate of] title or document number; or

(D) lien information;

(4) any out-of-state prescribed release of lien form, including an executed release on a lien entry form;

(5) out-of-state evidence with the word "Paid" or "Lien Satisfied" stamped or written in longhand on the face, followed by the name of the lienholder, countersigned or initialed by an agent, and dated; or

(6) original security agreements or copies of the original security agreements if the originals or copies are stamped "Paid" or "Lien Satisfied" with a company paid stamp or if they contain a statement in longhand that the lien has been paid followed by the company's name.

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

Filed with the Office of the Secretary of State on June 18, 2012.
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Brett Bray
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: July 29, 2012
For further information, please call: (512) 467-3853

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SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.22

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department, and Transportation Code, §§501.0041, 502.0021, 504.0011, and 520.003 which provide the Board of the Texas Department of Motor Vehicles with the authority to establish rules for each respective chapter of the Transportation Code; more specifically, Transportation Code, §502.151(a), which authorizes the department to require an application be made in the manner prescribed and include the information required by the department by rule and contain a full description of the vehicle as required by department rule; and Transportation Code, §502.002(b) and §502.151(d), which authorize the department to require an applicant for registration to provide current personal identification as determined by department rule.

CROSS REFERENCE TO STATUTE

§217.22. Motor Vehicle Registration.
(a) Registration. Unless otherwise exempted by law or this chapter, a vehicle to be used on the public highways of this state must be registered in accordance with Transportation Code, Chapter 502 and the provisions of this section. Transportation Code, Chapter 501, Subchapter E prohibits [and Subchapter D of this chapter (relating to Non-repairable and Salvage Motor Vehicles) prohibits] registration of a vehicle whose owner has been issued a salvage or nonreparable vehicle title. These vehicles may not be operated on a public roadway.

(b) Initial application for vehicle registration.

(1) An applicant for initial vehicle registration must file an application on a form prescribed by the department. The form will at a minimum require:

(A) the signature of the owner;

(B) the motor vehicle description, including, but not limited to, the motor vehicle's year, make, model, vehicle identification number, body style, [manufacturer's rated] carrying capacity [in tons] for commercial motor vehicles, and empty weight;

(C) the license plate number;

(D) the odometer reading, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements;

(E) the name and complete address of the applicant; and

(F) the name, mailing address, and date of any liens.

(2) The application must be accompanied by the following documents:

(A) evidence of vehicle ownership as specified in Transportation Code, §501.030, unless the vehicle has been issued a nonrepairable or salvage vehicle title in accordance with Transportation Code, Chapter 501, Subchapter E;

(B) registration fees prescribed by law;

(C) any local fees or other fees prescribed by law and collected in conjunction with registering a vehicle;

(D) evidence of financial responsibility required by Transportation Code, §502.046 [§502.153], unless otherwise exempted by law; and

(E) any other documents or fees required by law.

(3) An initial application for registration must be filed with the tax assessor-collector of the county in which the owner resides, except:

(A) an application for registration as a prerequisite to filing an application for [certificate of] title may also be filed with the county tax assessor-collector in the county in which the motor vehicle is purchased or encumbered; or

(B) if a county has been declared a disaster area, the resident may apply at the closest unaffected county if the affected county tax assessor-collector estimates the county offices will be inoperable for a protracted period.

(4) The recorded owner of a vehicle that was last registered or titled in another jurisdiction and is subject to registration in this state may apply for registration if the owner cannot or does not wish to relinquish the negotiable out-of-state evidence of ownership to obtain a Texas [certificate of] title. On receipt of a form prescribed by the department and payment of the statutory fee for a title application and any other applicable fees, the department will issue a registration receipt to the applicant.

(A) Registration receipt. The receipt issued at the time of application may serve as proof of registration and evidences title to a motor vehicle for registration purposes only, but may not be used to transfer any interest or ownership in a motor vehicle or to establish a lien.

(B) Information to be included on the form. The form will include the:

(i) out-of-state title number, if applicable;

(ii) out-of-state license plate number, if applicable;

(iii) state or country that issued the out-of-state title or license plate;

(iv) lienholder name and address as shown on the out-of-state evidence, if applicable;

(v) statement that negotiable evidence of ownership is not being surrendered; and

(vi) signature of the applicant or authorized agent of the applicant.

(C) Accompanying documentation. An application for registration under this paragraph must be supported, at a minimum, by:

(i) a completed application for registration, as specified in paragraph (1) of this subsection;

(ii) presentation, but not surrender of, evidence from another jurisdiction demonstrating that legal evidence of ownership has been issued to the applicant as the motor vehicle's owner, such as a validated title [or registration verification from the other jurisdiction], a registration receipt that is not more than six months past the date of expiration, a non-negotiable title, or written verification from the other jurisdiction; and

(iii) any other documents or fees required by law.

(D) Assignment. In instances in which the title or registration receipt is assigned to the applicant, an application for registration purposes only will not be processed. The applicant must apply for a [certificate of] title under Transportation Code, Chapter 501.

(E) Identification required.

(i) An application for initial registration is not acceptable unless the applicant presents a current photo identification of the owner containing a unique identification number and expiration date. The identification document must be a:

(I) driver's license or state identification certificate issued by a state or territory of the United States;

(II) United States or foreign passport;

(III) United States military identification card; or

(IV) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement.

(ii) If the motor vehicle is titled in:

(I) more than one name, then identification for one owner must be presented;

(II) the name of a leasing company, the identification of the lessee or lessor's employee along with a business card or authorization written on the lessor's letterhead matching the identification of the employee must be presented;

(III) the name of a trust, then the identification of a trustee must be presented; or


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(IV) the name of a business, government entity, or organization, then a business card or authorization written on letterhead must be presented matching the identification of the applicant.

(iii) If a power of attorney is being used to apply for a certified copy of title, then the applicant must show:

(1) identification matching the person or employee of the entity named as power of attorney;

(II) a business card or authorization written on the letterhead of an entity named as power of attorney that matches the identification of the employee; and

(III) identification of the owner.

(iv) Within this subparagraph, "current" is defined as not to exceed 12 months of expiration date.

(v) A person who holds a general distinguishing number issued under Chapter 503 of the Transportation Code or Chapter 2301, Occupations Code, is not required to submit the owner's identification to the county tax assessor-collector but must retain a copy of the owner's current photo identification in the purchase and sales records as required under §215.144 of this title (relating to Records of Sales and Inventory).

(c) Vehicle registration insignia.

(1) On receipt of a complete initial application for registration with the accompanying documents and fees, the department will issue vehicle registration insignia to be displayed on the vehicle for which the registration was issued for the current registration period.

(A) If the vehicle has a windshield, the symbol, tab, or other device prescribed by and issued by the department shall be attached to the inside lower left corner of the vehicle's front windshield within six inches of the vehicle inspection sticker in a manner that will not obstruct the vision of the driver.

(B) If the vehicle has no windshield, the symbol, tab, or other device prescribed by and issued by the department shall be attached to the rear license plate, except that registration receipts, retained inside the vehicle, may provide the record of registration for vehicles with permanent trailer plates.

(C) If the vehicle is registered as a former military vehicle as prescribed by Transportation Code, §504.502, the vehicle's registration number shall be displayed instead of displaying a symbol, tab, or license plate.

(i) Former military vehicle registration numbers shall be displayed on a prominent location on the vehicle in numbers and letters of at least two inches in height.

(ii) To the extent possible, the location and design of the former military vehicle registration number must conform to the vehicle's original military registration number.

(2) Unless otherwise prescribed by law, each vehicle registered under this subchapter:

(A) must display two license plates, one at the exterior front and one at the exterior rear of the vehicle[.][1] that are securely fastened at the exterior front and rear of the vehicle in a horizontal position of not less than 12 inches from the ground, measuring from the bottom, except that a vehicle described by Transportation Code, §621.2061 may place the rear plate so that it is clearly visible; or

(B) must display one plate that is securely fastened at or as close as practical to the exterior rear of the vehicle in a position

not less than 12 inches from the ground, measuring from the bottom if the vehicle is a road tractor, motorcycle, trailer or semitrailer.

(3) Each vehicle registered under this subchapter must display license plates:

(A) assigned by the department for the period; or

(B) validated by a registration insignia issued by the department that establishes that the vehicle is registered for the period.

(4) [¶] In accordance with Transportation Code, §§502.052 and §502.150(e), the department will cancel or not issue any license plate containing an alpha-numeric pattern that meets one or more of the following criteria.

(A) The alpha-numeric pattern conflicts with the department's current or proposed regular license plate numbering system.

(B) The executive director finds that the alpha-numeric pattern may be considered objectionable or misleading, including that the pattern may be viewed as, directly or indirectly:

(i) indecent (defined as including a reference to a sex act, an excretory function or material, or sexual body parts);

(ii) a vulgarity (defined as curse words);

(iii) derogatory (defined as an expression of hate directed toward people or groups that is demeaning to people or groups, or associated with an organization that advocates such expressions);

(iv) a reference to illegal activities or substances, or implied threats of harm; or

(v) a misrepresentation of law enforcement or other governmental entities and their titles.

(C) The alpha-numeric pattern is currently issued to another owner.

(5) [¶] The provisions of paragraph (1) of this subsection do not apply to vehicles registered with annual license plates issued by the department.

(d) Vehicle registration renewal.

(1) To renew vehicle registration, a vehicle owner must apply, prior to the expiration of the vehicle's registration, to the tax assessor-collector of the county in which the owner resides.

(2) The department will send a license plate renewal notice, indicating the proper registration fee and the month and year the registration expires, to each vehicle owner prior to the expiration of the vehicle's registration.

(3) The license plate renewal notice should be returned by the vehicle owner to the appropriate county tax assessor-collector or to the tax assessor-collector's deputy, either in person or by mail, unless the vehicle owner renews via the Internet. The renewal notice must be accompanied by the following documents and fees:

(A) registration renewal fees prescribed by law;

(B) any local fees or other fees prescribed by law and collected in conjunction with registration renewal; and

(C) evidence of financial responsibility required by Transportation Code, §502.046[.][2] §502.153, unless otherwise exempted by law.

(4) If a renewal notice is lost, destroyed, or not received by the vehicle owner, the vehicle may be registered if the owner presents personal identification acceptable to the tax assessor-collector. Failure
to receive the notice does not relieve the owner of the responsibility to renew the vehicle’s registration.

(5) Renewal of expired vehicle registrations.

(A) In accordance with Transportation Code, §502.407, a vehicle with an expired registration may not be operated on the highways of the state after the fifth working day after the date a vehicle registration expires.

(B) If the owner has been arrested or cited for operating the vehicle without valid registration then a [A] 20 percent delinquency penalty is due when registration is renewed [if the owner has been arrested or cited for operating the vehicle without valid registration].

(C) If the county tax assessor-collector determines that a registrant has a valid reason for being delinquent in registration, the vehicle owner will be required to pay for twelve months' registration. Renewal will establish a new registration expiration month that will end on the last day of the eleventh month following the month of registration renewal.

(D) If the county tax assessor-collector determines that a registrant does not have a valid reason for being delinquent in registration, the full annual fee will be collected and the vehicle registration expiration month will remain the same.

(E) If a vehicle is registered in accordance with Transportation Code, §§502.255, 502.431, 502.435, 502.454 [§§502.164, 502.167, 502.188, 502.203], 504.315, 504.401, 504.405, [§504.111] or 504.505, or 504.515 and if the vehicle's registration is renewed more than one month after expiration of the previous registration, the registration fee will be prorated.

(F) Any delinquent registration submitted directly to the department for processing will be evaluated to verify the reason for delinquency. If the department determines that a registrant has a valid reason for being delinquent in registration, the vehicle owner will be required to pay for 12 months' registration. Renewal will establish a new registration expiration month that will end on the last day of the 11th month following the month of registration. If the department determines that a registrant does not have a valid reason for being delinquent in registration, the full annual fee will be collected and the vehicle registration expiration month will remain the same. [Valid reasons for delinquency include those reasons set forth in Transportation Code, §502.176(c).]

(G) Evidence of a valid reason may include receipts, passport dates, and military orders. Valid reasons may include:

(i) extensive repairs on the vehicle;

(ii) the person was out of the country;

(iii) the vehicle is used only for seasonal use;

(iv) military orders;

(v) storage of the vehicle;

(vi) a medical condition such as an extended hospital stay; and

(vii) any other reason submitted with evidence that the tax assessor collector determines is valid.

(6) Refusal to renew registration for delinquent child support.

(A) Placement of denial flag. On receipt of a notice [final order] issued under Family Code, Chapter 232 for the suspension or nonrenewal of a motor vehicle registration, the department will place a registration denial flag on the motor vehicle record of the child support obligor as reported by the child support agency [final order].

(B) Refusal to renew registration. While a motor vehicle record is flagged, the county tax-assessor collector shall refuse to renew the registration of the associated motor vehicle.

(C) Removal of denial flag. The department will remove the registration denial flag on receipt of a removal notice issued by a child support agency under Family Code, Chapter 232. [On receipt of an order issued under Family Code, Chapter 232 vacating or staying an order for the suspension or nonrenewal of a motor vehicle registration, the department will remove the registration denial flag from the motor vehicle record.]

(7) License plate reissuance program. The county tax assessor-collectors shall issue new multi-year license plates at no additional charge at the time of registration renewal provided the current plates are over seven years old from the date of issuance, including permanent trailer plates.

(e) Replacement of license plates, symbols, tabs, and other devices.

(1) When a license plate, symbol, tab, or other registration device is lost, stolen, or mutilated, a replacement may be obtained from any county tax assessor-collector upon:

(A) the payment of the statutory replacement fee prescribed by Transportation Code, §502.060 or §504.007 [§502.184]; and

(B) the provision of a signed statement, on a form prescribed by the department, that states:

(i) the license plate, symbol, tab, or other registration device furnished for the described vehicle has been lost, stolen, or mutilated, and if recovered, will not be used on any other vehicle; and

(ii) the replaced license plate, symbol, tab, or other device will only be used on the vehicle to which it was issued.

(2) If the owner remains in possession of any part of the lost, stolen, or mutilated license plate, symbol, tab, or other registration device, that remaining part must be removed and surrendered to the department on issuance of the replacement and request by the county tax assessor-collector.

(f) Out-of-state vehicles. A vehicle brought to Texas from out-of-state must be registered within 30 days of the date on which the owner establishes residence or secures gainful employment, except as provided by Transportation Code, §502.090 [§502.0025]. Accompanying a completed application, an applicant must provide:

(1) an application for [certificate of] title as required by Transportation Code, Chapter 501, if the vehicle to be registered has not been previously titled in this state; and

(2) any other documents or fees required by law.

(g) The owner of an electric personal assistive mobility device, as defined by Transportation Code, §551.201, is not required to register it. The device may only be operated on a residential street, roadway, or public highway in accordance with Transportation Code, §551.202.

(h) A neighborhood electric vehicle[, as defined in §217.3(a)(3) of this chapter (relating to Motor Vehicle Certificates of Title)], is required to be titled in accordance with Transportation Code, §502.042 [§502.162] in order to be registered for operation on public roads;
(2) may be operated on a residential street, roadway, or public highway in accordance with Transportation Code, §§551.303;

(3) must comply with the evidence of financial responsibility requirements established in Transportation Code, §§502.046 [§502.153];

(4) must meet the definition of a "slow-moving vehicle" and must display a slow-moving-vehicle emblem as described in Transportation Code, §547.001; and

(5) is subject to all traffic and other laws applicable to motor vehicles.

(i) Enforcement of traffic warrant. A municipality may enter into a contract with the department under Government Code, Chapter 791 to indicate in the state's motor vehicle records that the owner of the vehicle is a person for whom a warrant of arrest is outstanding for failure to appear or who has failed to pay a fine on a complaint involving a violation of a traffic law. In accordance with Transportation Code, §702.003, a county tax assessor-collector may refuse to register a motor vehicle if such a failure is indicated in the motor vehicle record for that motor vehicle. A municipality is responsible for obtaining the agreement of the county in which the municipality is located to refuse to register motor vehicles for failure to pay civil penalties imposed by the municipality.

(j) Refusal to register due to traffic signal violation. A local authority, as defined in Transportation Code, §541.002, that operates a traffic signal enforcement program authorized under Transportation Code, Chapter 707 may enter into a contract with the department under Government Code, Chapter 791 to indicate in the state's motor vehicle records that the owner of a motor vehicle has failed to pay the civil penalty for a violation of the local authority's traffic signal enforcement system involving that motor vehicle. In accordance with Transportation Code, §707.017, a county tax assessor-collector may refuse to register a motor vehicle if such a failure is indicated in the motor vehicle record for that motor vehicle. The local authority is responsible for obtaining the agreement of the county in which the local authority is located to refuse to register motor vehicles for failure to pay civil penalties imposed by the local authority.

(k) Refusal to register vehicle in certain counties. A county may enter into a contract with the department under Government Code, Chapter 791 to indicate in the state's motor vehicle records that the owner of the vehicle has failed to pay a fine, fee, or tax that is past due. In accordance with Transportation Code, §§502.010 [§502.185], a county tax assessor-collector may refuse to register a motor vehicle if such a failure is indicated in the motor vehicle record for that motor vehicle.

(l) Record notation. A contract between the department and a county, municipality, or local authority entered into under Transportation Code, §§502.010 [§502.185], Transportation Code, §702.003, or Transportation Code, §707.017 will contain the terms set out in this subsection.

(1) To place or remove a registration denial flag on a vehicle record, the contracting entity must submit a magnetic tape or other acceptable submission medium as determined by the department in a format prescribed by the department.

(2) The information submitted by the contracting entity will include, at a minimum, the vehicle identification number and the license plate number of the affected vehicle.

(3) If the contracting entity data submission contains bad or corrupted data, the submission medium will be returned to the contracting entity with no further action by the department.

(4) The magnetic tape or other submission medium must be submitted to the department from a single source within the contracting entity.

(5) The submission of a magnetic tape or other submission medium to the department by a contracting entity constitutes a certification by that entity that it has complied with all applicable 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 June 18, 2012.

TRD-201203194
Brett Bray
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: July 29, 2012
For further information, please call: (512) 467-3853

PROPOSED RULES  June 29, 2012  37 TexReg 4847
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 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §217.3

The Texas Department of Motor Vehicles withdraws the proposed amendment to §217.3, which appeared in the May 18, 2012, issue of the Texas Register (37 TexReg 3708).

Filed with the Office of the Secretary of State on June 18, 2012.
TRD-201203191
Brett Bray
General Counsel
Texas Department of Motor Vehicles
Effective date: June 18, 2012
For further information, please call: (512) 367-3853

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.22

The Texas Department of Motor Vehicles withdraws the proposed amendment to §217.22, which appeared in the May 18, 2012, issue of the Texas Register (37 TexReg 3712).

Filed with the Office of the Secretary of State on June 18, 2012.
TRD-201203192
Brett Bray
General Counsel
Texas Department of Motor Vehicles
Effective date: June 18, 2012
For further information, please call: (512) 367-3853

WITHDRAWN RULES June 29, 2012 37 TexReg 4849
TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 3. CRIMINAL JUSTICE DIVISION

SUBCHAPTER H. CRIME STOPPERS PROGRAM CERTIFICATION

DIVISION 1. CRIME STOPPERS PROGRAM CERTIFICATION

1 TAC §3.9017, §3.9019

The Texas Crime Stoppers Council (Council) adopts the amendment of Title 1, Part 1, Chapter 3, Subchapter H, Division 1, §3.9017 and §3.9019, without changes to the proposed text as published in the March 16, 2012, issue of the Texas Register (37 TexReg 1873).

The adopted amendments to §3.9017 and §3.9019 correct typographical errors in the current text by changing the references in §3.9017(6) and §3.9019(6) from "§414.01(d)" to "§414.010(d)."

No comments were received regarding the proposed amendments.

The amendments are adopted under §414.006, Texas Government Code, which authorizes the Council to adopt rules to carry out its functions.

The adopted rules implement §414.005, Texas Government Code, which sets forth the duties of the Council.

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

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

Filed with the Office of the Secretary of State on June 11, 2012.

TRD-201203031
David Zimmerman
Assistant General Counsel
Office of the Governor
Effective date: July 1, 2012
Proposal publication date: March 16, 2012
For further information, please call: (512) 463-1919

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE

The Texas Health and Human Services Commission (HHSC) adopts the amendments to §353.2, concerning definitions, and §353.403, concerning enrollment and disenrollment; and adopts new Subchapter K, consisting of §353.1001 and §353.1003, concerning children's Medicaid dental services, without changes to the proposed text as published in the May 4, 2012, issue of the Texas Register (37 TexReg 3268) and will not be republished.

BACKGROUND AND JUSTIFICATION

On March 1, 2012, rules regarding the addition of dental services to the Medicaid managed care model (the "dental carve-in rules") became effective. The dental carve-in rules did not include a default assignment process for beneficiaries who do not select a dental home provider. The amendments to §353.2 and §353.403 are adopted to describe the default assignment process for dental homes. For consistency across the medical and dental programs, the amendments also revise the default assignment process for primary care providers to include criteria similar to those applied to dental home assignments. The amendments also provide that there is no limit to the number of times a member can request a change in his or her dental home or primary care provider.

Additionally, the amendments are adopted to revise the default assignment process for members who do not select a health care or dental managed care organization (MCO) to more accurately reflect HHSC's enrollment practices and systems capabilities.

The new sections are adopted to add clarification regarding the children's Medicaid dental services provided by dental MCOs, including general provisions regarding the administration of these services and the beneficiaries who are eligible to receive them.

Finally, the amendments and new sections are adopted to update and revise terminology for clarity and consistency, and clarify language through the use of plain language principles and consistency with the Code Construction Act (Government Code, Chapter 311).

COMMENTS

HHSC received one oral comment in favor of the proposal from the Texas Academy of Pediatric Dentistry at a public hearing held at the Medical Care Advisory Committee meeting in Austin on May 10, 2012.

HHSC also received written comments from the Texas Dental Association (TDA) and one individual. A summary of the comments and the responses follow.

Comment: One commenter supported HHSC's definition of "dental home" in §353.2(22), wherein HHSC clarified that an individual general or pediatric dentist may serve as the dental home. The commenter noted that this definition is consistent with the American Academy of Pediatric Dentistry's definition of the dental home.
Response: HHSC appreciates the comment.

Comment: One commenter supported HHSC’s revision to §353.403(f), which allows a member to request a change to his or her dental home at any time. The commenter noted that this flexibility helps preserve the established relationships between members and dentists in situations where the member was default assigned to an unfamiliar dentist.

Response: HHSC appreciates the comment.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §353.2

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021, which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas and to adopt rules and standards for program administration.

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

Filed with the Office of the Secretary of State on June 18, 2012.
TRD-201203173
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission

Effective date: July 8, 2012
Proposal publication date: May 4, 2012
For further information, please call: (512) 424-6900

SUBCHAPTER K. CHILDREN’S MEDICAID DENTAL SERVICES

1 TAC §353.1001, §353.1003

The new rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021, which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas and to adopt rules and standards for program administration.

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

Filed with the Office of the Secretary of State on June 18, 2012.
TRD-201203175
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission

Effective date: July 8, 2012
Proposal publication date: May 4, 2012
For further information, please call: (512) 424-6900

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 6. HOSPITAL SERVICES

1 TAC §354.1072

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §354.1072, concerning Authorized Inpatient Hospital Services, without changes to the proposed text as published in the April 13, 2012, issue of the Texas Register (37 TexReg 2475) and will not be republished.

Background and Justification

The 2012-2013 General Appropriations Act, House Bill 1, 82nd Legislature, Regular Session, 2011 (Article II, Health and Human Services Commission, Rider 61(b)(23)), requires HHSC to implement the Medicare billing prohibition as a Medicaid cost containment measure. The Medicare billing prohibition refers to Medicare’s policy for payment of outpatient hospital services provided on either the day of or during the three days prior to an inpatient admission.

The Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (the Act) clarified Medicare’s policy for payment of services provided in hospital outpatient departments on either the day of, or during the three days prior to, an inpatient admission (known as the three-day payment window). Under this policy, a hospital (or an entity wholly owned or operated by the hospital) includes, in its charges for the inpatient hospital stay, charges for all diagnostic services and non-diagnostic services “related to the admission” that are provided during the three-day payment window.
The Act clarifies that the term "other services related to the admission" includes all services that are not diagnostic services (other than ambulance and maintenance renal dialysis services) for which payment may be made by Medicare that are provided by a hospital to a patient: (1) on the date of the patient's inpatient admission; or (2) during the three days immediately preceding the date of admission unless the hospital demonstrates that such services are not related to such admission.

Hospitals that are not "subsection (d)" hospitals (those described in Social Security Act §1886(d), e.g., children's hospitals and psychiatric hospitals) are subject to a one-day payment window instead of the three-day payment window.

Comments

The 30-day comment period ended May 13, 2012. During this period, which included a public hearing on April 26, 2012, HHSC received no comments regarding the proposed amendment to the rule.

Statutory Authority

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

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

Filed with the Office of the Secretary of State on June 15, 2012.

TRD-201203096
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 1, 2012
Proposal publication date: April 13, 2012
For further information, please call: (512) 424-6900

1 TAC §354.1077

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §354.1077, concerning Provider Participation Requirements, without changes to the proposed text as published in the April 13, 2012 issue of the Texas Register (37 TexReg 2477) and will not be republished.

Background and Justification

The adopted rule removes obsolete language in §354.1077(c) stating that hospitals located in the Bexar, Dallas, El Paso, Harris, Lubbock, Nueces, Tarrant, or Travis service areas may not participate in Texas Medicaid unless they agree to provisions in §355.8064 relating to reimbursement adjustments for inpatient services provided to Supplemental Security Income (SSI) and SSI-related clients. With the expansion of managed care statewide, the provisions of §355.8064 are obsolete and the section was repealed effective March 29, 2012. The amendment to §354.1077 is a conforming change to remove the obsolete reference to §355.8064.

Comments

The 30-day comment period ended May 13, 2012. During this period, HHSC did not receive any comments regarding the proposed amendment to the rule.

Statutory Authority

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

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

Filed with the Office of the Secretary of State on June 15, 2012.

TRD-201203096
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: July 5, 2012
Proposal publication date: April 13, 2012
For further information, please call: (512) 424-6900

1 TAC §354.1831

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §354.1831, concerning Covered Drugs, without changes to the proposed text as published in the April 13, 2012 issue of the Texas Register (37 TexReg 2478) and will not be republished.

Background and Justification

The adopted rule removes the language in §354.1831(b) which states that with a few exceptions, the Medicaid Vendor Drug Program (VDP) does not reimburse for vitamins and minerals. Currently, medically necessary vitamins and minerals are available for Medicaid clients under age 21 only through pharmacies that are specifically enrolled in the Medicaid Comprehensive Care Program (CCP). The 2012-2013 General Appropriations Act, House Bill 1, 82nd Legislature, Regular Session, 2011 (Article II, Health and Human Services Commission, Rider 72) requires vitamins and minerals to be added to the VDP formulary so that all VDP-enrolled pharmacies can be reimbursed for this CCP benefit. Removing subsection (b) allows HHSC to add vitamins and minerals to the VDP formulary and reimburse VDP-enrolled pharmacies for this benefit for Medicaid clients under age 21.

Comments

The 30-day comment period ended May 13, 2012. During this period, HHSC did not receive any comments regarding the proposed amendment to the rule.

Statutory Authority

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

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

Filed with the Office of the Secretary of State on June 15, 2012.
TRD-201203097
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: August 1, 2012
Proposal publication date: April 13, 2012
For further information, please call: (512) 424-6900

CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM

The Texas Health and Human Services Commission (HHSC) adopts the amendments to §370.4, concerning definitions, §370.301, concerning CHIP enrollment packet, and §370.303, concerning completion of enrollment. The amendments to §370.4 and §370.303 are adopted with changes to the proposed text as published in the May 4, 2012, issue of the Texas Register (37 TexReg 3283) and will be republished. The amendment to §370.301 is adopted without changes to the proposed text as published in the May 4, 2012, issue of the Texas Register (37 TexReg 3283) and will not be republished.

BACKGROUND AND JUSTIFICATION

On March 1, 2012, rules regarding dental services provided through the Children's Health Insurance Program (CHIP) managed care model became effective. The rules did not include a default assignment process for applicants who do not select a dental home provider. These amendments are adopted to describe the default assignment process for dental homes. For consistency across the medical and dental programs, the amendments also revise the default assignment process for primary care providers to include criteria similar to those applied to dental home assignments. The amendments provide that there is no limit to the number of times a CHIP member can request a change in his or her dental home or primary care provider.

The amendments are also adopted to revise the default assignment process for members who do not select a health care or dental managed care organization to include a more detailed description of the agency's default assignment criteria.

The adopted rules also add clarification regarding the CHIP dental services provided by dental managed care organizations.

Finally, the amendments are adopted to update and revise terminology for clarity and consistency, and clarify language through the use of plain language principles and consistency with the Code Construction Act (Government Code, Chapter 311).

COMMENTS

HHSC received one oral comment in favor of the proposal from the Texas Academy of Pediatric Dentistry at a public hearing held at the Medical Care Advisory Committee meeting in Austin on May 10, 2012.

HHSC also received written comments from the Texas Dental Association (TDA) and one individual. A summary of the comments and the responses follow.

Comment: One commenter supported HHSC's definition of "dental home" in §370.4(30), wherein HHSC clarified that an individual general or pediatric dentist may serve as the dental home. The commenter noted that this definition is consistent with the American Academy of Pediatric Dentistry's definition of the dental home.

Response: HHSC appreciates the comment.

Comment: One commenter supported HHSC's revision to §370.303, which allows a member to request a change to his or her dental home at any time. The commenter noted that this flexibility helps preserve the established relationships between members and dentists in situations where the member was default assigned to an unfamiliar dentist.

Response: HHSC appreciates the comment.

Comment: One commenter asked HHSC to clarify the relationship between the 30 day requirement in the proposed revision to §370.303(b), and the expedited enrollment process for peri-nate (unborn child) applicants in §370.401(c). Under the proposed amendment to §370.303(b), HHSC or its designee will default assign an applicant who does not select a primary care provider, dental home, health care managed care organization (MCO), and dental MCO within 30 calendar days from the date the enrollment packet is mailed. Section 370.401(c), however, provides that HHSC's designee will expedite eligibility and enrollment for perinates so as to allow quick access to health care.

Response: HHSC agrees with the comment and has added clarification regarding the relationship between these rules. Consistent with §307.401(c)'s requirement for expedited enrollment, HHSC or its designee default assigns perinate applicants who do not select a health care MCO within 15 calendar days from the date the enrollment packet is mailed. Primary care provider, dental home, and dental MCO selections occur after the peri-nate's birth. HHSC has clarified §370.303(b) to provide that the 30 day selection requirement does not apply to perinate applicants.

The proposed text of §370.4 contained an error. In §370.4(30), the phrase "federally qualified health centers and individuals who are" should have been underlined as new language. The word "or" before the deleted word "and" should also have been underlined as new language. HHSC is adopting §370.4 with changes to ensure that the public is aware of the new language. HHSC also posted a notice of the error in the June 1, 2012, issue of the Texas Register (37 TexReg 4086).

SUBCHAPTER A. PROGRAM ADMINISTRATION

1 TAC §370.4

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Health and Safety Code §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

§370.4. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:
(1) **Action**--

(A) In the context of an eligibility or disenrollment determination by the Health and Human Services Commission (HHSC) or its designee, action is defined as:

(i) denial of CHIP eligibility;

(ii) disenrollment from CHIP; or

(iii) the failure of HHSC or its designee to act within 45 days on an applicant's request for CHIP eligibility determination.

(B) "Action" does not include expiration of a time-limited service.

(2) Acute care--Preventive care, primary care, and other medical or behavioral health care provided for a condition having a relatively short duration.

(3) Acute care hospital--A hospital that provides acute care services.

(4) Adverse determination--A determination by a managed care organization (MCO) that the health care services or dental services furnished, or proposed to be furnished, to a patient are not medically necessary or appropriate.

(5) Agreement or Contract--The formal, written, and legally enforceable contract and amendments thereto between HHSC and an MCO.

(6) Alien--A person who is not a native born or naturalized citizen of the United States of America.

(7) Allowable revenue--All managed care revenue received by the MCO pursuant to the contract during the contract period, including retroactive adjustments made by HHSC. This would include any revenue earned on CHIP managed care funds such as investment income, earned interest, or third party administrator earnings from services to delegated networks.

(8) Appeal--The formal process by which a member or his or her representative requests a review of the MCO's action.

(9) Applicant--An individual who lives with the child and applies for health and dental care coverage on behalf of the child. An applicant can only be:

(A) a child's parent, whether biological or adoptive;

(B) a child's grandparent, relative or other adult who provides care for the child;

(C) a minor not living with an adult relative applying for himself/herself; or

(D) a child's step-parent.

(10) Application--The standardized, written document that an applicant must complete to apply for health and dental care coverage through CHIP.

(11) Behavioral health service--A covered service for the treatment of mental, emotional, or chemical dependency disorders.

(12) Budget Group--The group of individuals who live in the home with the child for whom an application for health and dental care coverage is submitted and whose information is used to establish family size and calculate income. Individuals receiving Supplemental Security Income payments are not included in the Budget Group. Budget Group members include only:

(A) the child seeking health and dental care coverage; 

(B) the child's siblings under age 19 who live with the child (biological, adopted, or step-siblings);

(C) the child's biological or adoptive parents;

(D) the child's step-parent;

(E) the child's spouse, if married, and they have children.

(13) Capitation rate--A fixed, predetermined fee paid by HHSC to the MCO each month, in accordance with the contract, for each enrolled member in exchange for which the MCO arranges for or provides a defined set of covered services to the member, regardless of the amount of covered services used by the enrolled member.

(14) Child--An individual under the age of 19.

(15) Children's Health Insurance Program or CHIP or Program--The Texas State Children's Health Insurance Program established under Title XXI of the federal Social Security Act (42 U.S.C. §§1397aa, et seq.) and chapters 62 and 63, Health and Safety Code.

(16) CHIP Dental Services--The dental services provided through a dental MCO to a CHIP member.

(17) Claims processing entity--The MCO or its subcontractor that processes claims for CHIP.

(18) CMS--The Centers for Medicare and Medicaid Services, which is the federal agency responsible for administering Medicare and overseeing state administration of Medicaid and CHIP.

(19) Commission or HHSC--The Texas Health and Human Services Commission.

(20) Complainant--A member, or a treating provider or other individual designated to act on behalf of the member, who files a complaint.

(21) Complaint--Any dissatisfaction, expressed by a complainant, orally or in writing, to the MCO, with any aspect of the MCO's operation, including dissatisfaction with plan administration; procedures related to review or appeal of an adverse determination, as set forth in Texas Insurance Code, Chapter 843, Subchapter G; the denial, reduction, or termination of a service for reasons not related to medical necessity; the way a service is provided; or disenrollment decisions. The term does not include misinformation that is resolved promptly by supplying the appropriate information or clearing up the misunderstanding to the satisfaction of the member.

(22) Cost Sharing--Any enrollment fees or co-payments the member is responsible for paying.

(23) Countable Income--For the month of receipt, any type of payment that is a regular and predictable gain or a benefit to a Budget Group that is not specifically exempted. In determining countable income, do not include income received by the child or sibling member of the Budget Group who is under age 18 and enrolled in school.

(24) Countable Liquid Assets--Personal Property that is cash or that an applicant can readily convert to cash that is used in calculating a child's eligibility for CHIP.

(A) Countable liquid assets include the balances, less income received or deposited in the current month of the following:

(i) cash on hand;

(ii) cash in the bank;

(iii) cash in a Temporary Assistance to Needy Families (TANF) Electronic Benefit Transfer account;
(iv) money remaining from the sale of a homestead; and
(v) accessible trust funds.

(B) Countable Liquid Assets do not include:

(i) any resource exempted by federal law from consideration for purposes of determining eligibility or benefit levels for any federally funded needs-based program, such as TANF and Assets for Independence Act (AFIA) Individual Development Accounts; or

(ii) any financial instrument subject to rules limiting use of its proceeds, including penalties and/or tax liabilities incurred for early liquidation, such as individual retirement accounts and Keogh plans; or

(iii) the cash value of any insurance policy; or

(iv) Internal Revenue Code 529 qualified college savings program accounts, such as Texas Guaranteed Tuition Plan accounts; or

(v) funds received as educational grants or scholarships.

25 Covered service--A health care service or a dental service or item that the MCO must arrange to provide and pay for on a member's behalf under the terms of the contract executed between the MCO and HHSC. This includes all covered services and benefits identified in the Texas CHIP State Plan, and all value-added services approved by HHSC.

26 Cultural competency--The ability of individuals and systems to provide services effectively to people of various cultures, races, ethnic backgrounds, and religions in a manner that recognizes, values, affirms, and respects the worth of the individuals and protects and preserves their dignity.

27 Day--Calendar day, unless otherwise specified.

28 Default enrollment--The process established by HHSC to assign a CHIP managed care enrollee to an MCO when the enrollee has not selected an MCO.

29 Dental contractor--A dental MCO that is under contract with HHSC for the delivery of dental services.

30 Dental home--A provider who has contracted with a dental MCO to serve as a dental home to a member and who is responsible for providing routine preventive, diagnostic, urgent, therapeutic, initial, and primary care to patients, maintaining the continuity of patient care, and initiating referral for care. Provider types that can serve as dental homes are federally qualified health centers and individuals who are general dentists or pediatric dentists.

31 Dental managed care organization (dental MCO)--A dental indemnity insurance provider or dental health maintenance organization licensed or approved by the Texas Department of Insurance.

32 Dental service--The routine preventive, diagnostic, urgent, therapeutic, initial, and primary care provided to a member and included within the scope of HHSC's agreement with a dental contractor. For purposes of this chapter, "dental service" does not include dental devices for craniofacial anomalies; treatment rendered in a hospital, urgent care center, or ambulatory surgical center setting for craniofacial anomalies; or emergency services provided in a hospital, urgent care center, or ambulatory surgical center setting involving dental trauma. These types of emergency services are treated as health care services in this chapter.

33 Designee--A contractor of HHSC authorized to act on behalf of HHSC under this chapter.

34 Disability--A physical or mental impairment that substantially limits one or more of an individual's major life activities, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, socializing, or working.

35 Eligible provider--A network provider who provides medical services to a member or a non-network provider who agrees with an MCO to see a member for an agreed-upon rate on a case-by-case basis.

36 Enrollment--The process by which a child determined to be eligible for CHIP is enrolled in a CHIP MCO serving the service area in which the child resides.

37 Exclusive provider benefit plan (EPBP)--An MCO that complies with 28 TAC §§3.9201 - 3.9212, relating to the Texas Department of Insurance's requirements for EPBPs, and contracts with HHSC to provide CHIP coverage.

38 Exempt Income--Income received by the Budget Group that is not counted in determining income eligibility.

39 Experience rebate--The portion of the MCO's net income before taxes that is returned to the State in accordance with the MCO's contract with HHSC.

40 FPL--Federal Poverty Level Income Guidelines.

41 Gross Budget Group Income--Monthly Countable Income before any payroll deductions.

42 Health care managed care organization (health care MCO)--An entity that is licensed or approved by the Texas Department of Insurance to operate as a health maintenance organization or to issue an EPBP.

43 Health care services--The acute care, behavioral health care, and health-related services that an enrolled population might reasonably require in order to be maintained in good health, including, at a minimum, emergency services and inpatient and outpatient services.

44 Health maintenance organization (HMO)--An organization that holds a certificate of authority from the Texas Department of Insurance to operate as an HMO under Chapter 843 of the Texas Insurance Code, or a certified Approved Non-Profit Health Corporation formed in compliance with Chapter 844 of the Texas Insurance Code.

45 Hospital--A licensed public or private institution as defined in the Texas Health and Safety Code at Chapter 241, relating to hospitals, or Chapter 261, relating to municipal hospitals.

46 Households--The Budget Group plus any SSI recipient who is the child's:

(A) sibling who lives with the child (biological, adopted, or step-sibling);

(B) biological or adoptive parent; or

(C) step-parent.

47 Main dental home provider--See definition of "dental home" in this section.

48 Main dentist--See definition of "dental home" in this section.

49 Managed care--A health care delivery system or dental services delivery system in which the overall care of a patient is coordinated by or through a single provider or organization.
(50) Managed care organization (MCO)--A dental MCO or a health care MCO.

(51) Marketing--Any communication from an MCO to a client who is not enrolled with the MCO that can reasonably be interpreted as intended to influence the client's decision to enroll, not to enroll, or to disenroll from a particular MCO.

(52) Marketing materials--Materials that are produced in any medium by or on behalf of the MCO that can reasonably be interpreted as intended to market to potential members. Materials relating to the prevention, diagnosis or treatment of a medical or dental condition are not marketing materials.

(53) Medical home--A primary care provider (PCP) or specialty care provider who has accepted the responsibility for providing accessible, continuous, comprehensive, and coordinated care to members participating in an MCO contracted with HHSC.

(54) Medically necessary health care services--Means:

(A) Dental services and non-behavioral health services that are:

(i) reasonable and necessary to prevent illnesses or medical conditions, or provide early screening, interventions, or treatments for conditions that cause suffering or pain, cause physical deformity or limitations in function, threaten to cause or worsen a disability, cause illness or infirmity of a member, or endanger life;

(ii) provided at appropriate facilities and at the appropriate levels of care for the treatment of a member's health conditions;

(iii) consistent with health care practice guidelines and standards that are endorsed by professionally recognized health care organizations or governmental agencies;

(iv) consistent with the member's diagnoses;

(v) no more intrusive or restrictive than necessary to provide a proper balance of safety, effectiveness, and efficiency;

(vi) not experimental or investigative; and

(vii) not primarily for the convenience of the member or provider.

(B) Behavioral health services that:

(i) are reasonable and necessary for the diagnosis or treatment of a mental health or chemical dependency disorder, or to improve, maintain, or prevent deterioration of functioning resulting from such a disorder;

(ii) are in accordance with professionally accepted clinical guidelines and standards of practice in behavioral health care;

(iii) are furnished in the most appropriate and least restrictive setting in which services can be safely provided;

(iv) are the most appropriate level of care or level of service that can safely be provided;

(v) could not be omitted without adversely affecting the member's mental and/or physical health or the quality of care rendered;

(vi) are not experimental or investigative; and

(vii) are not primarily for the convenience of the member or provider.

(55) Member education program--A planned program of education:

(A) concerning access to health care services or dental services through the MCO and about specific health or dental topics;

(B) that is approved by HHSC; and

(C) that is provided to members through a variety of mechanisms that must include, at a minimum, written materials and face-to-face or audiovisual communications.

(56) Member materials--All written materials produced or authorized by the MCO and distributed to members or potential members containing information concerning the managed care program. Member materials include member ID cards, member handbooks, provider directories, and marketing materials.

(57) Member--A child enrolled in a CHIP MCO.


(59) Participating MCO--An MCO that has a contract with HHSC to provide services to members.

(60) Primary care provider (PCP)--A physician or other provider who has agreed with the health care MCO to provide a medical home to members and who is responsible for providing initial and primary care to patients, maintaining the continuity of patient care, and initiating referral for care.

(61) Provider--A credentialed and licensed individual, facility, agency, institution, organization or other entity, and its employees and subcontractors, that has a contract with the MCO for the delivery of covered services to the MCO's members.

(62) Provider education program--Program of education about the CHIP managed care program and about specific health or dental care issues presented by the MCO to its providers through written materials and training events.

(63) Provider network or network--All providers that have contracted with the MCO for the CHIP program.

(64) Quality improvement--A system to continuously examine, monitor, and revise processes and systems that support and improve administrative and clinical functions.

(65) Risk--The potential for loss as a result of expenses and costs of the MCO exceeding payments made by HHSC under the contract.

(66) Service area--The counties included in any HHSC-defined service area as applicable to each MCO.

(67) Qualified Alien--An alien who, at the time of application, satisfies the criteria established under 8 U.S.C. §1641(b).

(68) Significant traditional provider (STP)--A provider identified by HHSC as having provided a significant level of care to the target population.

(69) SSI--Supplemental Security Income.

(70) State Fiscal Year--The 12-month period beginning September 1 of each calendar year and ending August 31 of the following calendar year.

(71) State Plan--The plan permitted under federal law and approved by CMS that allows the state to implement the CHIP program.

(72) Value-added service--A service provided by an MCO that is in addition to the covered services included within the scope of the CHIP State Plan and the MCO's contract with HHSC.
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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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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Proposal publication date: May 4, 2012
For further information, please call: (512) 424-6900

SUBCHAPTER C. ENROLLMENT, RENEWAL, DISENROLLMENT, AND COST SHARING
DIVISION 1. ENROLLMENT AND DISENROLLMENT

1 TAC §370.301, §370.303

The amendments are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Health and Safety Code §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

§370.303. Completion of Enrollment.

(a) To complete CHIP enrollment an applicant must:

(1) select and indicate on the enrollment form, a single health care managed care organization (MCO) and a single dental MCO to cover all eligible children, regardless of the number of eligible children in the Budget Group;

(2) select a primary care provider (PCP) and a dental home, and place the names on the enrollment form;

(3) indicate if an eligible child has special health care needs based on criteria in the member guide; and

(4) sign and return the enrollment form.

(b) An applicant may select a PCP, dental home, health care MCO, and dental MCO by mail, telephone, or facsimile. Unless the applicant is a perinate receiving expedited enrollment in accordance with §370.401 of this chapter (relating to Perinates), he or she will have 30 calendar days from the date the enrollment packet is mailed to choose a health care MCO, dental MCO, PCP, and dental home. If the applicant does not choose a health care MCO, dental MCO, PCP, or dental home within the time period established by Health and Human Services Commission (HHSC), HHSC or its designee will assign one using the default assignment methodologies described in this section.

(c) PCP assignment. If an applicant has not selected a PCP, the health care MCO will assign one using an algorithm that considers:

(1) the applicant's established history with a PCP, as demonstrated by the health care MCO's encounter history with the provider in the preceding year;

(2) the geographic proximity of the applicant's home address to the PCP;

(3) whether the provider serves as a PCP to other members of the applicant's household;

(4) limitations on default assignment, such as PCP restrictions on age, gender, and capacity; and

(5) other criteria approved by HHSC.

(d) Dental home assignment. If an applicant has not selected a dental home, the dental MCO will assign one using an algorithm that considers:

(1) the applicant's established history with a dental home, as demonstrated by the dental MCO's encounter history with the provider in the preceding year;

(2) the geographic proximity of the applicant's home address to the dental home;

(3) whether the provider serves as the dental home to other members of the applicant's household;

(4) limitations on default assignment, such as dental home restrictions on age and capacity; and

(5) other criteria approved by HHSC.

(e) MCO assignment. If a beneficiary has not selected a health care MCO or dental MCO, HHSC or its administrative services contractor will assign one using an algorithm that considers the beneficiary's history with a PCP or dental home when possible. If this is not possible, HHSC or its administrative services contractor will equitably distribute beneficiaries among qualified MCOs, using an algorithm that considers one or more of the following factors:

(1) whether other members of the beneficiary's household are enrolled in the MCO;

(2) MCO performance;

(3) the greatest variance between the percentage of elective and default enrollments (with the percentage of default enrollments subtracted from the percentage of elective enrollments);

(4) capitation rates;

(5) market share; and

(6) other criteria determined by HHSC.

(f) Modified default enrollment process. HHSC has the option to implement a modified default enrollment process for MCOs when contracting with a new MCO or implementing managed care in a new service area, or when it has placed an MCO on full or partial enrollment suspension.

(g) Request to change dental home or PCP. There is no limit on the number of times a member can request to change his or her dental home or PCP. A member can request a change in writing or by calling the MCO's toll-free member hotline.

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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Texas Health and Human Services Commission
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37 TexReg 4858  June 29, 2012  Texas Register
TITLE 4. AGRICULTURE
PART 2. TEXAS ANIMAL HEALTH COMMISSION
CHAPTER 35. BRUCELLOSIS
SUBCHAPTER A. ERADICATION OF BRUCELLOSIS IN CATTLE

4 TAC §35.4

The Texas Animal Health Commission (Commission or TAHC) adopts amendments to §35.4, concerning Entry, Movement, and Change of Ownership, without changes to the proposed text as published in the February 17, 2012, issue of the Texas Register (37 TexReg 825) and will not be republished.

After discussion at the Commission meeting on June 5, 2012, it was decided that implementation of these amendments will be delayed until January 1, 2013.

The Commission ceased to enforce the requirement for change of ownership Brucellosis testing because of insufficient funds to supplement the cost of testing at livestock markets. This became effective on August 1, 2011. For that reason, the agency is amending the rule to no longer require testing. Historically, cattle that were tested for brucellosis had permanent official identification applied (such as ear tags) and recorded at the time of the testing. This reality was a significant asset to the agency's ability to successfully track or trace down cattle as needed for all disease programs, not just brucellosis. The identification capability was also lost at the time the testing requirement was no longer enforced. For that reason, the Commission is also proposing to require that all cattle that are parturient or post parturient or 18 months of age and older, except steers and spayed heifers, changing ownership within Texas shall be officially identified with Commission approved permanent identification.

The Commission believes that it is in the best interest of the state’s cattle industry to develop and implement a minimal identification requirement in order to maintain a surveillance standard that supports the full completion of the Brucellosis eradication program as well as other ongoing disease eradication or surveillance efforts. This requirement was enforced prior to August 1, 2011, and though the testing requirement is adopted to be halted, the need for permanent identification for traceability reasons is still relevant. With an increased dependence on brucellosis testing at slaughter, and an increase in tuberculosis prevalence nationwide, the need for permanent identification is more critical than ever.

The Commission received 42 comments from various Associations and Industry Groups, as well as Livestock Markets. The Commission provides a summation of these comments prior to providing a response to specific questions and comments.

As an initial response, the Commission provides a more in-depth explanation for the value and importance for identification of cattle and reason for the proposal. First and foremost, identification and thus enhanced traceability is a critical component of any successful disease surveillance program. During the heyday of the bovine brucellosis and tuberculosis eradication programs, adequate identification allowed Commission personnel to quickly locate exposed and/or diseased animals effectively. Quickly locating animals of interest is critical to an effective disease response. The dairy identification system already in place in 2009, when the most recent affected dairy was discovered, effectively prevented the need to test all dairy cattle in the state. While TAHC officials traced and tested thousands of animals as the result of a herd detected with tuberculosis, the dairy identification system allowed the agency to confidently focus trace efforts on individual animals rather than testing entire herds.

The need for prompt traceability is critical for not only the existing domestic disease programs, but also in case a foreign or emerging disease was introduced in to the U.S. The first 24 hours of response when faced with a highly contagious disease such as Foot and Mouth Disease has been proven to be the key in quickly allowing normal trade and marketability to resume. An efficient and accurate animal disease traceability system also helps reduce the number of animals potentially involved in an investigation.

The United States Department of Agriculture (USDA) recently released a 130-page report entitled "Assessment of Pathways for the Introduction and Spread of Mycobacterium bovis in the United States". This is an assessment on the pathways for the introduction and spread of bovine tuberculosis (TB) in the United States. The report indicates that a lack of a national animal identification program leaves the U.S. vulnerable to containing disease outbreaks and puts the U.S. at risk of shutting down commerce if there is a significant disease outbreak. Texas has historically been considered to possess one of the best traceability systems to date due to the application of permanent official identification (eartags) as part of the ongoing brucellosis testing program. But with the cessation of the brucellosis testing in 2011, Texas' vulnerability to not being able to successfully locate at-risk cattle increases daily.

Although Texas has been considered brucellosis free since 2008, two newly infected herds were disclosed in 2011. Texas is still considered high risk for more detection of the disease, as well as high risk for disclosing brucellosis test reactions in cattle due to swine brucellosis in the feral population. The presence of ear tags on adult cattle when disclosed at slaughter will help ensure that herds won't have to test unnecessarily due to lack of identification.

The Commission must be prepared to aggressively pursue any newly disclosed affected or suspect herds to diagnose and eliminate the disease as quickly as possible. It is imperative, not only to be able to find the disease and eliminate it, but to find it before it spreads to other susceptible herds. Effective traceability will also garner trust and better cooperation with neighboring states and trade partners. The identification of a newly infected BSE cow in California in 2012 is a reminder of the need of effective traceability for diseases beyond brucellosis and tuberculosis.

The Commission and USDA currently have rules that require official identification on all cattle tested as part of a regulatory disease program. The rules also require the market to record existing official IDs on any adult cattle presented for sale, all dairy cattle prior to movement, any bulls involved with the Trichomoniasis program (including virgins) and Mexican origin event cattle. The Commission also has a requirement that all dairy cattle moving intrastate are required to be officially identified. These requirements were put in place in efforts to provide the various cattle industries an ability to maintain adequate traceability. The dairy identification program was voluntarily agreed to by the dairy industry as a result of changing dairy management practices that often included the commingling of cattle in large calf raiser operations.
The USDA's Animal and Plant Health Inspection Service (APHIS) is currently proposing regulations to establish minimum national official identification and documentation requirements for the traceability of livestock moving interstate. Under their proposed rule, unless specifically exempted, livestock belonging to species covered by this rulemaking that are moved interstate would have to be officially identified and accompanied by an interstate certificate of veterinary inspection or other documentation. As proposed, the USDA rules will ultimately require official permanent identification for all adult cattle moving interstate and the Commission's proposed rule would automatically ensure Texas was in compliance with the USDA rule under consideration.

The Commission supports the concept of establishing minimum national official identification and documentation requirements for livestock and poultry moving interstate. The Commission also believes that it is in the best interest of the state's cattle industry to develop and implement a minimal identification requirement in order to maintain a surveillance standard that supports ongoing disease eradication or surveillance efforts.

Texas Southwest Cattle Raisers Association (TSCRA) submitted a letter which supports state and federal animal health officials' ability to respond rapidly and effectively to animal health emergencies. The TSCRA supports the required presence of a Commission approved ear tag in all sexually intact cattle 18 months of age and older at change of ownership, except cattle intended for movement directly to slaughter. The organization also believes that slaughter cattle held in feed yard prior to slaughter must be tagged by owner.

Independent Cattlemen's Association (ICA) believes that voluntary animal disease traceability is preferable to mandated or required system. They felt like any system for this purpose must be efficient and not impede commerce.

Texas Farm Bureau (TFB) stated that their standing policy is focused on not requiring identification of animals before movement from the original premise, but they do support the proposed amendments to Chapter 35 as proposed. They also requested an adequate implementation timeframe and the creation of a workable plan.

Farm and Ranch Freedom Alliance (FARFA) submitted comments which stated that they do not feel that any of the agency's statutes authorize the agency to require identification by itself separate from a disease control program. They believe that the rule as proposed will impose unnecessary costs and is based on unwarranted assumptions. They also question whether free metal tags will be provided by USDA for any length of time, as there is no guarantee that the funding will continue. They do not want producers to bear the brunt of the costs when the government funds end. They also claimed that the fiscal note should also have addressed how much it will cost the state to keep records on all the tags and record keeping at every sale barn. Lastly, they urge the agency to include an exemption to the identification requirement for cattle going to slaughter.

Texas Veterinary Medical Association (TVMA) submitted a letter which stated that a meaningful animal identification system is essential to disease surveillance and will aid the TAHC in detecting early and responding rapidly to any disease outbreaks which may occur. They went on to state that veterinarians believe that an effective identification and disease traceability system will help reduce the number of animals involved in a given investigation and the time needed to respond which can decrease the cost to producers and the TAHC. In addition, identification of cattle for disease control purposes is essential to the maintenance of public confidence and continued marketability of food animal products.

Livestock Marketing Association of Texas (LMAT) submitted a letter that indicated they were opposed to the rule for the following reasons: 1) that this was just an attempt to return to Brucellosis first point testing at a market where all mature cattle are handled; 2) the rule was developed without input of the affected livestock market and producer; and 3) while the rule impacts everyone equally they felt the Commission has failed to create an enforcement plan to make sure country cattle are also enforced upon.

LMAT also resubmitted letters from various livestock markets with the comments they had submitted and which were written for the earlier rule proposal on identification of cattle at livestock markets which was pulled back.

On behalf of the Giddings Livestock Commission, comments received stated that part of the process to run cattle through the chute for tagging will create extra stress on the animals, which will result in crippled cattle and more down animals. They indicated that they believe that the back tag is sufficient because in today's computer world the animal can be easily traced back to owner. They indicate that to their knowledge rarely has there been a case of trace back of contaminated beef back to the market or owner.

The Gonzales Livestock Market submitted a comment that in continuing to test and ID animals we are adding a direct cost to the producer. They will incur the fees associated with tagging each animal which includes man hours, supplies and stress to animals resulting in less profit. They assert that health certificates and identification are just two requirements that can be taken care of by the buyer of the cattle saving the expense of testing and identifying all animals.

Groesbeck Auction and Livestock Company sent in a comment that stated that this rule would place a tremendous burden on us to implement and comply with. The injury to livestock and the cost of operation plus loss of product due to bruising it is hard to calculate. Please do not make auction markets bare [sic] the expense and problems associated with this rule.

Karnes County Livestock Exchange made the written comment that "[a]ny benefit of this program could not offset the cost."

Kirbyville Auction Market's comment was that they were deeply opposed to the rule and if the TAHC wants the ear tags read they should have their inspector read the tags. They state that this is the TAHC getting someone else to do their job.

Lockhart Auction Market's comment wanted to know "[w]hat is the exact need for and what benefit does the beef cattle industry get out of this rule change?" They indicated that the proposed rule singles out all livestock sold at Texas livestock auctions. Why would this unfair rule be implemented by part of our state government that is funded by taxpayer dollars? It appears that the TAHC is only interested in imposing another tax. Since the funding ran out for Brucellosis testing there have been a significant decrease in number of downer cattle and bruised carcasses.

Meridian Livestock Commission sent in a comment that if the Commission is truly wanting to identify the origin shouldn't the TAHC tag all livestock on the farm or ranch with a computer chip.
Sulphur Springs Livestock Commission asked the question of why should the auction market be responsible for recording the identification tag number when it is already being recorded by an official with the state of Texas and recorded by each dairyman or farmer? Spending money to record numbers that have already been recorded twice will not be working properly for our cattle customers. Who is going to chase the calf runners who have a weekly route to pick up calves? How is the state going to ensure parity in this situation? If the identification is being handled by the state of Texas and dairy men then I think this system is redundant.

Stephenville Cattle Company indicated that they fail to see the need for this regulation. Secondly, this is like the testing program except funding is cut and now you want all that information and to charge the sale barn. An ID system for the World Trade Organization is un-American. Is this program for the WTO?

There were other comments received that fall into a variety of categories and issues. The Commission provides a response to the comments by focusing on those germane categories or issues discussed below.

The Commission received a number of comments that questioned or complained about the fact that the identification was not an appropriate part of a disease program. Several comments expressed disbelief or concern that the requirement was an appropriate or efficient type of disease control. One commenter stated that “[u]ltimately, tagging will not prevent disease. I urge you to reconsider the proposed rule.” Another stated that the “TAHC’s proposed rule for tagging cattle under Chapter 35 does not address the TAHC’s directive to control disease. Tagging these animals does NOT accomplish this.” Another urged the agency to have courage to do what they felt is right by stating that “I urge you to make good common sense decisions when it comes to addressing your directive of tracing disease. Tagging will never be the answer for this. Need you to be like Atikus in To Kill a Mockingbird and walk around in our shoes (without a muzzle on them—hal).” Another commenter stated that they felt like “[t]he Chapter 35 ruling for tagging is inconsistent and, no doubt, an overreach by state and federal agencies through guise attempts to “protect the public.” Another stated that “[t]here is no benefit in tagging cattle going to slaughter. It does nothing to prevent disease.” While another stated “[u]ltimately, tagging will not prevent disease and only imposes financial hardships on the state (for implementation) and the rancher (for compliance). I urge you to reconsider the current proposed rule.” Overall, the comments all carried the theme that “[y]our proposed changes will not stop a single disease or lessen its effects and aims to hurt small producers like myself the most. If I had 100 head and outstanding facilities, I could justify the cost, but I don’t. I will have to figure out how to catch my cows, get them penned, and somehow get them tagged. I only have 18 head. The costs will be substantially higher for folks like me for a full-time cattle operator with 1000 head. You should reconsider this rule change, or come up with some compelling reason why my cows will be healthier or better tasting because of it, and why I should bear the extra expense of your bureaucratic imagination.”

The Commission believes maintaining the outstanding traceability system Texas currently possesses due to the historical Brucellosis test requirement for change of ownership (that was only recently suspended) is essential to ensuring that the agency can quickly respond to future disease situations. Even with having obtained Brucellosis and Tuberculosis Free status it is still necessary and incumbent on the agency to maintain an adequate surveillance program to adequately respond to any future disease response contingency.

Texas continues to be threatened by disease incursions from Mexico, wildlife reservoirs, other states, and emerging disease potentialities. The cessation of testing cattle and only applying an ear tag to an animal will shorten the length of time the animal spends in a chute, and will minimize the potential harm to animals as related to the historic testing process.

A number of comments requested that the agency modify the proposal to allow for slaughter cattle to move on a backtag or other forms of identification. Several commenters felt that we should accept either brands or backtags. One stated that “[t]he only PERMANENT identification for cattle is a properly affixed brand. Ear tags, brucellosis, flip or electronic, do not stay with an animal for life.” While another stated that “no tags going to slaughter.” This was a common theme for a majority of the commenters as they stated that “[a]nimals going straight to slaughter should be backtagged only. There is no reason for a bangs tag, other than to “TAX” the seller again. It does not matter if the seller or the sale barn personnel do the tagging. It is still a definite cost to the seller.” Another stated that “[t]he branding of cattle will still work fine and will accomplish what you want to accomplish. You are swatting at a gnat with a boat paddle.”

Although backtags are considered as official identification for slaughter purposes right now, the proposed USDA rule will eventually phase those out. Further, many cattle are not slaughtered immediately, and market personnel do not know how quickly a "slaughter" type animal will be slaughtered after purchase. Usually the buyer determines this after the animal has left a market. For this same reason, it is not possible to easily determine a comprehensive process to define a slaughter animal for all situations. Market conditions, weather, and demand can all influence the ultimate end use of an animal, and again this decision can and is often made after the animal in question leaves a market setting. Backtag retention drops off dramatically after just a few days, and many slaughter plants may feed slaughter cattle for various periods of time prior to the slaughter date.

It is simply intuitive that any form of permanent identification applied at change of ownership will provide better traceability than a paper backtag. The agency routinely faces unidentified Texas animals needing to be traced from slaughter surveillance and also routinely receives trace out investigation requests from other states on animals that did not possess permanent identification.

Until August 1, 2011, Texas livestock market personnel had been applying official identification to all adult cattle sold there since April 1, 1987, so it is a proven fact that this process can be managed and maintained at the speed of commerce. With the cessation of testing, and the proposal to only apply an ear tag, the risk of injury to the animal is greatly diminished from the prior protocol, because the animals will be handled less and be held in a chute for a much shorter period of time.

Because Texas was one of the last states to perform brucellosis testing at markets however, it was able to witness first hand over the last few years the struggles other state animal health agencies faced in attempting to trace animals as part of disease investigations when they no longer routinely had permanent identification (ear tags) applied. Because Texas adult cattle were all permanently identified until August 1, it has enjoyed a huge ad-

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vantage in quickly tracing animals at risk. This rule is intended to maintain Texas’ ability to quickly, efficiently and effectively trace cattle as part of ongoing disease investigations.

Several comments wanted to know what types of ID are acceptable. In response, the Commission provides below those forms of identification that the Commission would consider as being official:

1.) USDA alphanumeric tests tags (USDA silver tags);
2.) USDA alphanumeric brucellosis calffood vaccination tags (USDA orange tags);
3.) Dairy Herd Improvement Association (DHIA) tags;
4.) Official breed registry tattoos or firebrand;
5.) USDA approved Animal Identification Number (AIN) tags for official identification of individual animals;
6.) Three forms of official AIN tags are available:
   a.) Manufacturer coded “900” series RFID tags, available from many feed or supply stores;
   b.) USA prefix RFID tags; and
   c.) Country code "840" series RFID tags. Producers who use the “840” series must have their premises registered;
7.) A commercially produced cattle-style clip, flap or button tag that identifies the dairy or owner and includes a unique animal number in the herd; and
8.) The TAHC will also considering approval for other types of identification as requested.

Some comments were regarding traceability. Several folks asked about information recoverability. One stated that "[s]omeone is going to tag the animal, but the TAHC needs to spell out, who reads the tag, who records the tag, how the owner is assigned, and finally where does this information go for immediate retrieval by the TAHC." Another stated that "my TAHC should be helping me to stay in production, not taxing me out of business. For the record, I support animal ID. Take the time and due diligence to affect an efficient sensible program. A bangs tag and a cardboard box do not make a permanent animal identification system."

The Commission is committed to working with industry and USDA to ensure that any identification applied will be retrievable and accessible in a timely fashion to effectively augment future disease investigations.

There were also a number of comments directed at the types of cattle that were required to be officially identified. TSCRA indicated that they support the presence of a TAHC approved ear tag in all sexually intact cattle 18 months of age and older at points of ownership transfer, except direct to slaughter, provided that cattle held in feed yard prior to slaughter must be tagged by owner. Specifically, a majority of comments asked that the agency provide an exemption for "direct to slaughter" animals with backtags being sufficient identification. ICA indicated that the USDA proposed national rules will allow slaughter cattle to move on a back tag and this should be adequate.

The proposed USDA rule will phase out the acceptance of backtags as official identification for slaughter cattle. Further, market management will not always know which cattle may be held in feed lot type settings prior to leaving the market. A requirement for an owner of slaughter cattle on feed to apply official identification would be problematic for enforcement by Commission personnel.

The Commission received several comments that indicated that they felt there should be identification options. One commenter stated that they "prefer options, such as branding, or ear tattoos." The Commission believes that backtags should be phased out as acceptable forms of identification by themselves. Even if properly applied, backtags are not as reliable a form of identification as more permanent methods such as 840 or brite (National Uniform Eartagging System or NUES) tags. As previously stated, many slaughter cattle are fed for varying lengths of time by either the market buyer or the slaughter plant itself. Fed animals simply don't retain backtags like they would other permanent versions of identification. Cattle sold as slaughter type cattle can also be diverted for breeding or grazing use after purchase, and/or the buyer can simply change his mind as to their use after the sale, thus weakening the reliance on backtags for official identification.

Firebrands are considered official forms of identification in Texas for proving ownership of cattle and other legal reasons, but Texas is not a "brand" state and it does not believe them to be a very reliable identification method for disease surveillance because firebrands are not collected from carcasses at slaughter. The Commission does not believe brand inspection documents are equal to Certificates of Veterinary Inspection (CVI) for assuring animals are healthy and state entry requirements are met. The Commission does not intend to accept those in lieu of a CVI under the proposed USDA rule. The Commission will consider allowing cattle to enter using breed specific registration firebrands or tattoos under the proposed new rule, and already allows for this on testing and identification of Texas cattle.

With the presence of bovine tuberculosis on the increase and Brucellosis still affecting cattle from the Yellowstone area, it is more critical than ever that any cattle detected at slaughter have a traceable identification in place. Approximately 600,000 adult cattle were sold off from Texas cattle herds in 2011 due to the drought. Many of these went to other states. The lack of permanent identification on Texas cattle the second half of the year created many compliance issues for the states of destination, created problems for veterinarians trying to write health certificates for interstate movement, and created a vacuum of traceability for the receiving states as well as Texas, if and when these animals return to Texas.

The Commission received a number of comments which indicated that they felt that the rule would "cause all sorts of surcharges." The agency received a lot of comments that restated the same concern that "the agency assumes that the tags will be provided by the USDA at no cost, yet the federal agency has not finalized its own rule for animal ID and the funding is in doubt. It is inappropriate to adopt a rule based on the assumption that the cost will be covered by the government, yet continue to impose its requirements if that assumption proves false."

Those comments went on to state that "[e]ven if the tags are provided by USDA, there will still be costs in time and labor. The agency should not impose these costs when someone sells cattle that will be going directly to slaughter. There is no benefit to tagging an animal that is going to be slaughtered shortly, creating unnecessary and pointless costs for the owners." One comment stated that "[t]he agency has also failed to address the costs to the State of implementing the proposed rule, from recordkeep-
ing to enforcement. STOP trying to get us into the animal ID situation." Another comment went on to state that "[i]t does not address the issue of traceability for disease control. The costs for this program are going to be filtered all the way down to the small farmer. Even if the agency believes costs will be covered by government, we all know that NOTHING is free and the taxpayers will be the ones to pay for this program--small farmers are taxpayers."

The Commission received a number of comments that indicated that they felt that identification was not cost effective. One commenter stated that "[a]t a minimum, the rule should include a provision that suspends its requirements if government funding is not available and should exclude animals being sold to go to slaughter." In the same vein, another comment was "what makes you think that the Fed Government will pay for this tagging when that is who is defunding the brucellosis testing?"

This rule was not proposed in an attempt to revise NAIS. That initiative is dead. It is also not proposed to simply comply with a possible USDA rule, although compliance with the same would be a bonus. This rule was proposed to maintain an effective traceability system for Texas cattle for all contingencies that may arise in the future. The proposal is not looking for a major over-haul of marketing practices. TAHC rules and the Texas market process has already employed the application of permanent identification for many years, until just recently. Many markets continue to tag and or test some or all of the adult cattle sold there now.

A number of commenters stated that the agency did not have the necessary authority to require identification as part of a disease control program. The commenter stated that the plain meaning of the one-sentence proposed rule is that all cattle in the State of Texas, "except steers and spayed heifers changing ownership within Texas..." are to be identified pursuant to this proposed rule. This requirement is not contingent upon change of ownership. One commenter stated that "I doubt that the TAHC has the authority to require identification of all cattle, at the expense of the owners of cattle, except in the context of a comprehensive program of disease control which, as noted in the agency's Explanations of Proposed Rules, is no longer in effect due to lack of federal funding support." That commenter went on to state that "[a]nother cost to the State will be that of defending legal challenges to the rule. Without statutory authority to support the rule, it will be ripe for legal challenge. Even if the rule is overly broad on its face, and without statutory authority, the Attorney General will be compelled to support it, at great expense to Texas taxpayers." Another stated that "[y]our agency doesn't have the statutory authority to require tagging. Tagging cannot be a reasonable substitute for brucellosis testing, which your agency is quitting doing." Another felt that it was a "back-door way to try to institute NAIS and people see through your methods." Another commenter had a very Texas style belief that "[y]ou have no right to tell me what I may or may not do with one of my animals by private treaty."

Regarding the questions of adequate agency authority to implement a identification requirement the Commission would note the following. As provided in the agency's statutory authority below the Commission is vested with the mission to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. The Commission believes that requiring identification as a part of our existing disease programs is a necessary element to better protect our affected Texas Industries and to allow our cattle to move with ease in interstate commerce. This surveillance phase is the final and necessary element to fully and completely eradicate Brucellosis.

That subsection also provides that the Commission is authorized to adopt any rules necessary to carry out the purposes of that subsection, including rules concerning testing, movement, inspection, and treatment. As a control measure, the Commission by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. Also, §163.066 provides, as a control measure, the Commission by rule may regulate the movement of cattle.

The Commission received a number of comments that indicated that they felt that the agency should do a better job of providing a formal cost analysis or fiscal note for assumed cost of the requirement. Every day that goes by with adult cattle sold in Texas which do not have permanent identification, the Texas cattle industry's vulnerability to ineffective disease traceability increases. This rule is intended to maintain Texas' ability to quickly, efficiently and effectively trace cattle as part of ongoing disease investigations. As such, some of the costs, such as purchasing tags or having the animals tagged when loading for movement, are basic costs that are inherent in any product that is moved interstate or intrastate based on the need for public confidence in a traceability system. The quicker the Commission is able to respond and trace any animals exposed to a disease, the more the consumer will have confidence in a Texas identification system, thus helping to allow cattle to move without restrictions.

One commenter stated that "[t]he state of Texas should pay for the disease testing at the sale barn." Another commenter stated that "[t]he state of Texas should pay for the disease testing at the sale barn." Another commenter stated that "[t]he state of Texas should pay for the disease testing at the sale barn." Another commenter stated that "[t]he state of Texas should pay for the disease testing at the sale barn." Another commenter stated that "[t]he state of Texas should pay for the disease testing at the sale barn." Another commenter stated that "[t]he state of Texas should pay for the disease testing at the sale barn." Another commenter stated that "[t]he state of Texas should pay for the disease testing at the sale barn." Another commenter stated that "[t]he state of Texas should pay for the disease testing at the sale barn." Another commenter stated that "[t]he state of Texas should pay for the disease testing at the sale barn." Another commenter stated that "[t]he state of Texas should pay for the disease testing at the sale barn." Another commenter stated that "[t]he state of Texas should pay for the disease testing at the sale barn." Another commenter stated that "[t]he state of Texas should pay for the disease testing at the sale barn."

An effective traceability system in Texas will not be free. The risk of loss of trade, and the inability of the agency to quickly and effectively respond to a highly contagious disease such as Foot and Mouth Disease, could be the difference in a short-term disruption of marketability of product, versus a long-term or permanent change in the way Texas livestock products are sold. There were a number of comments focused on the fiscal note for the rule proposal. Regarding the agency's fiscal note it is important and necessary to understand that the fiscal note information is a specific requirement of the rulemaking process and has a more narrow application than is being understood by the commenters.

A fiscal note must be prepared which shows the name and title of the officer or employee responsible for preparing or approving the note. The evaluation for the creation of a fiscal note is made based on a determination for each year of the first five years that the rule will be in effect. In order to create this determination it is necessary to consider four different assessments. The
first is to determine whether there are any additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rule. The second is to determine whether there are any estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. The third is to determine whether there will be an estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule. And the fourth, if applicable, is to determine whether enforcing or administering the rule will not have foreseeable implications relating to cost or revenues of the state or local governments.

The agency will use existing budget and revenues to perform this program and as such there is not a fund increase requested by the agency to perform these tasks.

**STATUTORY AUTHORITY**

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized by §161.041(b) to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That authority is found in §161.061.

As a control measure, the Commission by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.054. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.005 provides that the Commission may authorize the executive director or another employee to sign written instruments on behalf of the Commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission.

No other statutes, articles, or codes are 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 June 12, 2012.

TRD-201203045

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**CHAPTER 51. ENTRY REQUIREMENTS**

4 TAC §§51.3, 51.7, 51.14

The Texas Animal Health Commission (Commission) adopts amendments to §51.3, concerning Exceptions; §51.7, concerning All Livestock - Special Requirements; and §51.14, concerning Swine. Section 51.3 is adopted with changes to the proposed text as published in the February 17, 2012, issue of the Texas Register (37 TexReg 827) and will be republished. Section 51.7 and §51.14 are adopted without changes to the proposed text as published and will not be republished.

The Commission is amending §51.3 to clarify and modify requirements for sheep, goats and swine. The first amendment is to provide an exception for swine consigned from out-of-state directly to slaughter or from an out-of-state premise of origin to a Texas livestock market specifically approved under the Title 9, Code of Federal Regulations §71.20. This amendment is expanding the current exception for entry permits to include an exception to both entry permits and health certificates. However, after consideration, in order to protect against any potential disease threat, the Commission is modifying the exception to more narrowly focus on a class of swine that is not a disease risk for swine in Texas. The rule is adopted for swine consigned from an out-of-state premise of origin and originating from a Validated and Qualified Herd to a Texas livestock market. Swine consigned from out-of-state and going directly to slaughter are already exempted under §51.3(a)(6). Also, the Commission is focusing on swine that originate from a Validated and Qualified Herd because they will be tested for brucellosis and/or pseudorabies prior to entering Texas, and therefore it is easier to trace back to the farm of origin and they do not need to be tested prior to sale for change of ownership. In addition, the lepto vaccination that is required on breeding swine 6 months of age and older entering Texas is usually done by the producers having Validated and Qualified Herds.

The Commission is also amending the entry permit exception for sheep and goats consigned from out-of-state to clarify it is for those originating from "Consistent States" which have an active scrapie surveillance and control program.

The Commission is removing a requirement in §51.7 related to Vesicular stomatitis (VS). VS is a viral disease that primarily affects cattle, horses, and swine and occasionally sheep, goats, llamas, and alpacas. VS has been confirmed only in the Western Hemisphere. It is known to be an endemic disease in the warmer regions of North, Central, and South America, but outbreaks of the disease in other temperate geographic parts of the Hemisphere occur sporadically. The Southwestern and Western United States have experienced a number of VS outbreaks in recent years. Outbreaks in the Southwestern United States have usually occurred during the warmer months, often along waterways and in valleys.

Currently, when an animal comes from a state where VS has been diagnosed, the Certificate of Veterinary Inspection (CVI)
must state that for any equine, bovine, porcine, caprine, ovine, or cervidae entering Texas from a state where VS has been diagnosed within the last 30 days that they have not been exposed. Through agency experience and by analyzing cases in the Western United States over the past decade, the agency has found that VS does not appear to be particularly contagious. It rarely affects more than one or two animals on a premise and has not been shown to spread to susceptible animals on adjacent premises. The Commission is of the opinion that discontinuing the requirement for a CVI and accompanying statement will allow more normal commerce without jeopardizing the health of Texas livestock. The requirement prohibiting entry of certain livestock from a premises or area under quarantine for VS will be left in place to protect Texas livestock.

In §51.14, the Commission is removing the requirement that swine imported into Texas for feeding, breeding, or exhibition purposes must be accompanied by a certificate of veterinary inspection certifying that swine have not been exposed to hog cholera, which is now called Classical Swine Fever (CSF). CSF has been eradicated from the United States for many years and there is no need to require this statement anymore.

No comments were received regarding adoption of the amendment.

STATUTORY AUTHORITY

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That authority is found in §161.061.

As a control measure, the Commission by rule may regulate the movement of animals. The Commission may restrict the interstate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.054. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.005 provides that the Commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission.

§51.3. Exceptions.

(a) Exceptions for a certificate of veterinary inspection and entry permit.

(1) Cattle 18 months of age and over delivered directly from the farm of origin to slaughter;
(2) Beef breed cattle 18 months of age and over entering from other than a farm-of-origin may be moved to slaughter, or to an approved feedyard when accompanied by a VS 1-27 Form on which each animal is individually identified. Brucellosis test data shall be written on the VS 1-27 Form which must include the test date and results;
(3) Beef breed cattle 18 months of age and over delivered directly to a USDA specifically approved livestock market by the owner or consigned there and accompanied by a waybill;
(4) Beef breed steers, spayed heifers, beef breed cattle under 18 months of age, delivered to slaughter and accompanied by a waybill or to a livestock market by the owner or consigned there and accompanied by a waybill;
(5) Beef breed steers, spayed heifers and beef breed cattle under 18 months of age delivered to a feedlot for feeding for slaughter by the owner or consigned there and accompanied by a waybill;
(6) Swine and poultry delivered to slaughter by the owner or consigned there and accompanied by a waybill;
(7) Baby poultry which have not been fed or watered if from a national poultry improvement plan (NPIP) or equivalent hatchery, and accompanied by NPIP Form 9-3 or Animal and Plant Health Inspection Service (APHIS) Form 17-6, or have an approved "Commuter Poultry Flock Agreement" on file with the state of origin and the Texas Animal Health Commission;
(8) Beef breed steers, spayed heifers, and beef breed cattle under 18 months of age originating in New Mexico which are accompanied by a New Mexico official certificate of livestock inspection;
(9) Feral Swine being shipped directly to slaughter. Feral swine shall be shipped in a sealed vehicle accompanied by a 1-27 permit with the seal number noted on the permit also providing the number of head on the permit;
(10) Equine when accompanied by a valid equine interstate passport or equine identification card and a completed VS Form 10-11 showing negative results to an official EIA test within the previous six months; and
(11) Swine consigned from an out-of-state premise of origin and originate from a Validated and Qualified Herd to a Texas livestock market specifically approved under Title 9, Code of Federal Regulations §71.20.

(b) Exceptions for a certificate of veterinary inspection. Equine may enter Texas when consigned directly to a veterinary hospital or clinic for treatment or for usual veterinary procedures when accompanied by a permit number issued by the Texas Animal Health Commission. Following release by the veterinarian, equidae must be returned immediately to the state of origin by the most direct route. Equine entering Texas for sale at a livestock market, may first be consigned directly to a veterinary hospital or clinic for issuance of the certificate of veterinary inspection, when accompanied by a prior entry permit issued by the Texas Animal Health Commission.

(c) Exceptions for an entry permit.

(1) Swine that originate from an approved Swine Commuter Herd or that originate from a Pseudorabies Stage IV or V state or area and Brucellosis free state or area and are not vaccinated for pseudorabies;
(2) Poultry that originate from an approved Poultry Flock;

(3) Cattle that originate from an approved Cattle Commuter Herd;

(4) Equine accompanied by a valid equine interstate passport or equine ID card and a completed VS Form 10-11 showing negative results to an official EIA test within the previous six months;

(5) Sheep and goats consigned from out-of-state and originating from Consistent States (having an active scrapie surveillance and control program); and

(6) Exotic fowl from out of state, except ratites.

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

Filed with the Office of the Secretary of State on June 12, 2012.

TRD-201203046
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: July 2, 2012
Proposal publication date: February 17, 2012
For further information, please call: (512) 719-0724

TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 25. PREPAID FUNERAL CONTRACTS

SUBCHAPTER B. REGULATION OF LICENSES

7 TAC §25.25

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §25.25, concerning conversion from trust-funded to insurance-funded benefits, without changes to the proposed text as published in the May 4, 2012, issue of the Texas Register (37 TexReg 3289).

These amendments are adopted to increase flexibility in setting guaranteed interest rates used in conversion annuities, to better balance the need for a fair return with the potential for long periods of low interest rates.

Existing prepaid contracts for trust-funded prepaid funeral benefits may be converted to insurance-funded prepaid funeral benefits under Finance Code, §154.204, if the department finds that the proposed insurance-funded arrangement safeguards the rights and interests of the individuals who purchased the prepaid contracts to substantially the same degree as the trust-funded arrangement proposed to be replaced. Pursuant to former §25.25(c)(9)(A), the funding insurance policy was required to be a fixed annuity that provided guaranteed growth based on a minimum annual interest rate of two percent. This rate created difficulties in the current low interest rate environment.

The amendment to §25.25(c)(9)(A) adds flexibility to the interest rate determination to better balance the need for a fair return with the potential for long periods of low interest rates. The amendments allow the minimum guaranteed fixed interest rate to be set between one percent and three percent, depending upon the yield of five-year treasury bonds at the time the application is approved. The calculation method is patterned on the manner in which minimum nonforfeiture amounts for certain annuities are calculated under Insurance Code, §1107.055.

Further, for comparison the amendments expand the historical yield table or graph required by §25.25(c)(11) to include annuities sold in this state in the last five years for the purpose of funding new prepaid funeral contracts.

The amendments also make conforming changes to §25.25(c)(16) and (17) and correct cross-reference errors in §25.25(c)(4) and (19).

The Department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §154.204, which provides for department approval of a conversion from trust-funded prepaid funeral benefits to insurance-funded prepaid funeral benefits, and under Finance Code, §154.051, which authorizes the commission to adopt rules relating to the enforcement and administration of Chapter 154.

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

Filed with the Office of the Secretary of State on June 15, 2012.

TRD-201203102
A. Kaylene Ray
General Counsel
Texas Department of Banking
Effective date: July 5, 2012
Proposal publication date: May 4, 2012
For further information, please call: (512) 475-1300

PART 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 80. TEXAS RESIDENTIAL MORTGAGE LOAN ORIGINATOR REGULATIONS

The Finance Commission of Texas (the Commission) adopts new 7 TAC Chapter 80, §§80.1 - 80.5, 80.100 - 80.107, 80.200 - 80.205, and 80.300 - 80.302, concerning Texas Residential Mortgage Loan Originator Regulations. Sections 80.1 - 80.5, 80.100 - 80.107, 80.201 - 80.205, and 80.300 - 80.302 are adopted without changes to the proposed text as published in the May 4, 2012, issue of the Texas Register (37 TexReg 3291) and will not be republished. Section 81.200 is adopted with changes to the proposed text and will be republished.
The new rules under Chapter 80 are adopted to allow the Department to reorganize its rules, clarify existing rules and practices, and use current terminology.

The 30-day comment period ended June 4, 2012, during which no comments were received on the proposed new rules.

**SUBCHAPTER A. GENERAL PROVISIONS**

7 TAC §§80.1 - 80.5

The new rules are adopted under Texas Finance Code, §11.306 and §156.102, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 156.

The statutory provisions affected by the adopted new rules are contained in Texas Finance Code, Chapter 156.

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

Filed with the Office of the Secretary of State on June 15, 2012.

TRD-201203131
Caroline C. Jones
General Counsel
Texas Department of Savings and Mortgage Lending
Effective date: July 5, 2012
Proposal publication date: May 4, 2012
For further information, please call: (512) 475-1297

**SUBCHAPTER B. LICENSING**

7 TAC §§80.100 - 80.107

The new rules are adopted under Texas Finance Code, §11.306 and §156.102, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 156.

The statutory provisions affected by the adopted new rules are contained in Texas Finance Code, Chapter 156.

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

Filed with the Office of the Secretary of State on June 15, 2012.

TRD-201203132
Caroline C. Jones
General Counsel
Texas Department of Savings and Mortgage Lending
Effective date: July 5, 2012
Proposal publication date: May 4, 2012
For further information, please call: (512) 475-1297

**SUBCHAPTER C. DUTIES AND RESPONSIBILITIES**

7 TAC §§80.200 - 80.205

The new rules are adopted under Texas Finance Code, §11.306 and §156.102, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 156.

The statutory provisions affected by the adopted new rules are contained in Texas Finance Code, Chapter 156.

§80.200. Required Disclosures.

(a) An originator shall include the following notice, Figure: 7 TAC §80.200(a), to a residential mortgage loan applicant with an initial application for a residential mortgage loan:

Figure: 7 TAC §80.200(a)

(b) At each physical office, and on its website, a company or an originator shall conspicuously post the following notice:

Figure: 7 TAC §80.200(b)

(c) A notice is deemed to be conspicuously posted under subsection (b) of this section if a customer with 20/20 vision can read it from each 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, etc.) are posted. If applicable a notice is deemed conspicuously posted if prominently displayed on the 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 June 15, 2012.

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Caroline C. Jones
General Counsel
Texas Department of Savings and Mortgage Lending
Effective date: July 5, 2012
Proposal publication date: May 4, 2012
For further information, please call: (512) 475-1297
CHAPTER 80. TEXAS RESIDENTIAL MORTGAGE LOAN ORIGINATOR REGULATIONS

The Finance Commission of Texas (the Commission) adopts the repeal of 7 TAC Chapter 80, Subchapter B (§§80.8 - 80.11), relating to Professional Conduct; Subchapter C (§§80.12 - 80.14), relating to Administration and Records; Subchapter D (§80.15), relating to Complaints and Investigations; Subchapter E (§80.16), relating to Hearings and Appeals; Subchapter F (§80.17), relating to Interpretations; Subchapter G (§80.18), relating to Enforcement of Liens; Subchapter H (§80.19), relating to Savings Clause; Subchapter I (§80.20 and §80.21), relating to Inspections and Investigations; Subchapter J (§80.22), relating to Forms; Subchapter K (§80.23), relating to Mortgage Call Reports; Subchapter L (§§80.301 - 80.307), relating to Licensing, in conjunction with the Commission's review of Chapter 80. The repeal is adopted without changes to the proposal as published in the May 4, 2012, issue of the Texas Register (37 TexReg 3298).

In general, the purpose of the repeal is to enhance the clarity of existing language, to repeal language that unnecessarily duplicates existing statutes, to enhance structural organization, and to reflect current practice.

The 30-day comment period ended June 4, 2012, during which no comments were received on the proposed repeal.

SUBCHAPTER B. PROFESSIONAL CONDUCT

7 TAC §§80.8 - 80.11

The repeal is adopted under Texas Finance Code, §11.306 and §156.102, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Texas Finance Code, Chapter 156.

The statutory provisions affected by the repeal are contained in Texas Finance Code, Chapter 156.

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

Filed with the Office of the Secretary of State on June 15, 2012.

TRD-201203109
Caroline C. Jones
General Counsel
Texas Department of Savings and Mortgage Lending
Effective date: July 5, 2012
Proposal publication date: May 4, 2012
For further information, please call: (512) 475-1297

SUBCHAPTER C. ADMINISTRATION AND RECORDS

7 TAC §§80.12 - 80.14

The repeal is adopted under Texas Finance Code, §11.306 and §156.102, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Texas Finance Code, Chapter 156.

The statutory provisions affected by the repeal are contained in Texas Finance Code, Chapter 156.

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

Filed with the Office of the Secretary of State on June 15, 2012.

TRD-201203111

37 TexReg 4868 June 29, 2012 Texas Register
SUBCHAPTER F. INTERPRETATIONS

7 TAC §80.17
The repeal is adopted under Texas Finance Code, §11.306 and §156.102, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Texas Finance Code, Chapter 156.

The statutory provisions affected by the repeal are contained in Texas Finance Code, Chapter 156.

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

Filed with the Office of the Secretary of State on June 15, 2012.
TRD-201203114
Caroline C. Jones
General Counsel
Texas Department of Savings and Mortgage Lending
Effective date: July 5, 2012
Proposal publication date: May 4, 2012
For further information, please call: (512) 475-1297

SUBCHAPTER I. INSPECTIONS AND INVESTIGATIONS

7 TAC §§80.20, §80.21
The repeal is adopted under Texas Finance Code, §11.306 and §156.102, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Texas Finance Code, Chapter 156.

The statutory provisions affected by the repeal are contained in Texas Finance Code, Chapter 156.

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-201203115
Caroline C. Jones
General Counsel
Texas Department of Savings and Mortgage Lending
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Proposal publication date: May 4, 2012
For further information, please call: (512) 475-1297

SUBCHAPTER J. FORMS

7 TAC §80.22
The repeal is adopted under Texas Finance Code, §11.306 and §156.102, which authorize the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Texas Finance Code, Chapter 156.

The statutory provisions affected by the repeal are contained in Texas Finance Code, Chapter 156.

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.
CHAPTER 81 MORTGAGE BANKER REGISTRATION AND RESIDENTIAL MORTGAGE LOAN OFFICER LICENSING

The Finance Commission of Texas (the Commission) adopts the repeal of 7 TAC Chapter 81, Subchapter A (§§81.1 - 81.6), relating to Licensing; Subchapter B (§§81.7 - 81.9), relating to Professional Conduct; Subchapter C (§81.10), relating to Administration and Records; Subchapter D (§81.11), relating to Complaints and Investigations; Subchapter E (§§81.12 and 81.13), relating to Examinations and Investigations; Subchapter F (§81.14), relating to Hearings and Appeals; Subchapter G (§81.15), relating to Mortgage Call Reports; Subchapter H (§81.16), relating to Recovery Fund; Subchapter I (§81.17), relating to Interpretations; Subchapter J (§81.18), relating to Enforcement of Liens; Subchapter K (§81.19), relating to Savings Clause; and Subchapter L (§81.20), relating to Sponsorship and Termination Thereof, in conjunction with the Commission's review of Chapter 81. The repeal is adopted without changes to the text as published in the May 4, 2012, issue of the Texas Register (37 TexReg 3301).

In general, the purpose of the repeal is to enhance the clarity of existing language, to repeal language that unnecessarily duplicates existing statutes, to enhance structural organization, and to reflect current practice.

The 30-day comment period ended June 4, 2012, during which no comments were received on the proposed repeal.

SUBCHAPTER A. LICENSING

7 TAC §§81.1 - 81.6

The repeal is adopted under Texas Finance Code, §157.011, which authorizes the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the repeal are contained in Texas Finance Code, Chapter 157.

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

Filed with the Office of the Secretary of State on June 15, 2012.

TRD-201203119
Caroline C. Jones
General Counsel
Texas Department of Savings and Mortgage Lending
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Proposal publication date: May 4, 2012
For further information, please call: (512) 475-1297

SUBCHAPTER B. PROFESSIONAL CONDUCT

7 TAC §§81.7 - 81.9

The repeal is adopted under Texas Finance Code, §157.011, which authorizes the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the repeal are contained in Texas Finance Code, Chapter 157.

Filed with the Office of the Secretary of State on June 15, 2012.

TRD-201203119
Caroline C. Jones
General Counsel
Texas Department of Savings and Mortgage Lending
Effective date: July 5, 2012
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For further information, please call: (512) 475-1297
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 C. Jones
General Counsel
Texas Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1297

SUBCHAPTER C. ADMINISTRATION AND RECORDS

7 TAC §81.10
The repeal is adopted under Texas Finance Code, §157.011, which authorizes the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the repeal are contained in Texas Finance Code, Chapter 157.

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 C. Jones
General Counsel
Texas Department of Savings and Mortgage Lending
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SUBCHAPTER D. COMPLAINTS AND INVESTIGATIONS

7 TAC §81.11
The repeal is adopted under Texas Finance Code, §157.011, which authorizes the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

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SUBCHAPTER E. EXAMINATIONS AND INVESTIGATIONS

7 TAC §81.12, §81.13
The repeal is adopted under Texas Finance Code, §157.011, which authorizes the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the repeal are contained in Texas Finance Code, Chapter 157.

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. HEARINGS AND APPEALS

7 TAC §81.14
The repeal is adopted under Texas Finance Code, §157.011, which authorizes the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the repeal are contained in Texas Finance Code, Chapter 157.

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 G. MORTGAGE CALL REPORTS
7 TAC §81.15
The repeal is adopted under Texas Finance Code, §157.011, which authorizes the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the repeal are contained in Texas Finance Code, Chapter 157.

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SUBCHAPTER H. RECOVERY FUND
7 TAC §81.16
The repeal is adopted under Texas Finance Code, §157.011, which authorizes the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the repeal are contained in Texas Finance Code, Chapter 157.

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SUBCHAPTER I. INTERPRETATIONS
7 TAC §81.17
The repeal is adopted under Texas Finance Code, §157.011, which authorizes the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the repeal are contained in Texas Finance Code, Chapter 157.

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 J. ENFORCEMENT OF LIENS
7 TAC §81.18
The repeal is adopted under Texas Finance Code, §157.011, which authorizes the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the repeal are contained in Texas Finance Code, Chapter 157.

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SUBCHAPTER K. SAVINGS CLAUSE
7 TAC §81.19
The repeal is adopted under Texas Finance Code, §157.011, which authorizes the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the repeal are contained in Texas Finance Code, Chapter 157.

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 L. SPONSORSHIP AND TERMINATION THEREOF

7 TAC §81.20

The repeal is adopted under Texas Finance Code, §157.011, which authorizes the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the repeal are contained in Texas Finance Code, Chapter 157.

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 81. MORTGAGE BANKER REGISTRATION AND RESIDENTIAL MORTGAGE LOAN ORIGINATOR LICENSING

The Finance Commission of Texas (the Commission) adopts new 7 TAC Chapter 81, §§81.1 - 81.5, 81.100 - 81.105, 81.200 - 81.205, and 81.300 - 81.302, concerning Mortgage Banker Registration and Residential Mortgage Loan Originator Licensing. Sections 81.1 - 81.5, 81.100 - 81.105, 81.201 - 81.205, and 81.300 - 81.302 are adopted without changes to the proposed text as published in the May 4, 2012, issue of the Texas Register (37 TexReg 3304) and will not be republished. Section 81.200 is adopted with changes to the proposed text and will be republished.

The addition of the rules under new Chapter 81 is adopted to allow the Department to reorganize its rules, clarify existing rules and practices, and use current terminology.

The 30-day comment period ended June 4, 2012, during which no comments were received on the proposed rules under new Chapter 81.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§81.1 - 81.5

The new rules are adopted under Texas Finance Code, §157.011, which authorizes the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the adopted new rules are contained in Texas Finance Code, Chapter 157.

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 B. LICENSING

7 TAC §§81.100 - 81.105

The new rules are adopted under Texas Finance Code, §157.011, which authorizes the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the adopted new rules are contained in Texas Finance Code, Chapter 157.

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. DUTIES AND RESPONSIBILITIES

7 TAC §§81.200 - 81.205

The new rules are adopted under Texas Finance Code, §157.011, which authorizes the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the adopted new rules are contained in Texas Finance Code, Chapter 157.

§81.200. Required Disclosures.

(a) An originator shall include the following notice, Figure 7 TAC §81.200(a), to a residential mortgage loan applicant with an initial application for a residential mortgage loan:

(b) A mortgage banker or originator shall maintain in its records evidence of timely delivery of the disclosure in subsection (a) of this section.

(c) At each physical office, and on its website, a mortgage banker or an originator shall conspicuously post the following notice: Figure 7 TAC §81.200(c)

(d) A notice is deemed to be conspicuously posted under subsection (c) of this section if a customer with 20/20 vision can read it from each 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, etc.) are posted. If applicable, a notice is deemed conspicuously posted if prominently displayed on the 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.

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SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

7 TAC §§81.300 - 81.302

The new rules are adopted under Texas Finance Code, §157.011, which authorizes the Finance Commission, under the advice of the Commissioner, to adopt rules necessary to enforce Chapter 157.

The statutory provisions affected by the adopted new rules are contained in Texas Finance Code, Chapter 157.

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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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 89. PROPERTY TAX LENDERS

The Finance Commission of Texas (commission) adopts amendments to 7 TAC Chapter 89, §§89.204, 89.205, 89.301 - 89.304, 89.306 - 89.310, 89.405 - 89.407, 89.409, 89.504, 89.602, 89.701 and 89.702, concerning Property Tax Lenders. The adopted amendments affect rules contained in Subchapter B, concerning Authorized Activities; Subchapter C, concerning Application Procedures; Subchapter D, concerning License; Subchapter E, concerning Disclosures; Subchapter F, concerning Costs and Fees, and Subchapter G, concerning Transfer of Tax Lien. The commission also adopts new §89.207, concerning Files and Records Required; and §89.312, concerning Property Tax Employee License Under Nationwide Mortgage Licensing System and Registry.

The commission adopts the amendments to §§89.302, 89.303, 89.309, 89.405, 89.407, 89.504, and 89.602 with changes to the proposed text as published in the May 4, 2012, issue of the Texas Register (37 TexReg 3314). The commission also adopts new §89.207 and §89.312 with changes to the proposed text as published in the May 4, 2012, issue of the Texas Register (37 TexReg 3314). The commission adopts the amendments to §§89.204, 89.205, 89.301, 89.304, 89.306 - 89.308, 89.310, 89.406, 89.409, 89.701 and 89.702 without changes to the proposed text as published in the May 4, 2012, issue of the Texas Register (37 TexReg 3314).

The commission received one written comment on the proposal from Texas RioGrande Legal Aid, Inc. The comment primarily focuses on suggested clarification for new §89.207, Files and Records Required. The comment also recommends changes in terminology throughout the rules to provide consistency and reduce confusion.

Additionally, since the proposal, the agency has made further revisions to §89.207 as a result of informal comments received. The changes made as a result of the formal and informal comments are discussed after the purpose paragraphs for the provisions being amended.

The majority of the rules in Chapter 89 are being amended. Any Chapter 89 rule not included in this adoption will be maintained in its current form.

In general, the purpose of the amendments and new rules regarding 7 TAC Chapter 89 is to implement changes resulting from the commission's review of Chapter 89 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC Chapter 89 was published in the March 16, 2012, issue of the Texas Register (37 TexReg 1917). The agency did not receive any comments on the notice of intention to review. The agency circulated an early draft of the proposed changes to interested stakeholders and incorporated several changes suggested by stakeholders.

Most of the changes are technical in nature and relate to improvements in consistency, grammar, punctuation, capitalization, and formatting. Additional changes provide clarification, more precise legal citations, and improved internal regulation references. These technical corrections have been modeled after improvements made during the rule review of Chapter 83, Subchapter A, Rules for Regulated Lenders, as the property tax lender statute and rules were both patterned after their regulated lender counterparts. There are, however, two new sections, existing sections with new substantive language, and some significant formatting amendments. The new language is generally intended to address issues discovered during the examination process. The major formatting changes serve to implement streamlining improvements in the licensing process similar to those used for the newly licensed credit access businesses.

The individual purposes of the amendments to each section or new rule are provided in the following paragraphs. Specific explanation is included with regard to new rules, new substantive language, substantive changes in language, and significant formatting amendments. The remaining changes throughout all sections consist of minor technical revisions and will be summarized more generally.

Concerning technical corrections in §89.204, the title of Texas Finance Code, Chapter 351, along with the short title and citation have been removed from §89.204(a). When Chapter 89 was first adopted, this language was needed in order to distinguish
the chapter regarding property tax lenders from another chapter with an identical number. The legislature has since corrected the duplicate numbering and hence made this language unnecessary. Similar deletions of these references occur throughout the rules. In addition, technical corrections have been made in §89.204 to provide parallel formatting.

The title to §89.205 has been amended by adding the words "and Internet" after "Loans by Mail." This section currently contains subsection (c), which states: "a loan made, negotiated, arranged, or collected by or through the Internet is considered a 'loan by mail.'" The "Internet" reference in the title is intended to assist Internet lenders in locating this regulation with more ease. Additionally, §89.205 includes revisions related to parallel formatting and the removal of unnecessary Chapter 351 descriptors, as explained in the preceding paragraph.

Section 89.207, Files and Records Required, is a new rule outlining the recordkeeping requirements for property tax lenders. These records must be maintained and made available for examination in compliance with Texas Finance Code, §351.008. Adopted §89.207 includes language throughout allowing the use of paper or manual, electronic, optically imaged, or a combination of the preceding types of recordkeeping systems.

Paragraph (1) includes the following required records: a loan register, general business and accounting records, advertising records, adverse action records, and an official correspondence file. Paragraph (2) outlines the information that must be included in the record of an individual borrower's account. Paragraph (3) details the records that must be maintained for each individual property tax loan transaction file or be able to be produced within a reasonable amount of time. This paragraph includes files that must be maintained for all property tax loan transactions and the records associated with certain situations (e.g., residential property used for personal, family, or household use; loans delinquent for 90 consecutive days; loans where separate disclosures are provided under federal or state law; loans involving foreclosure or attempted foreclosure).

Paragraph (4) of new §89.207 outlines the procedures for making corrective entries to the borrower's account record. Paragraph (5) provides for the maintenance of litigation and foreclosure records. Paragraph (6) requires property tax lenders to maintain a disaster recovery plan. Paragraph (7) describes the record retention period and required availability of records for examinations.

In §89.207(2)(K) regarding collection contact history, the agency would like to clarify that communications merely to obtain the status of payments sent or received do not fall within the scope of subparagraph (K)'s language. For example, if a customer calls and asks the licensee: "Did you receive my check yet?" The licensee may reply "yes" and would not be required to maintain a record of that contact.

In §89.207(3)(A)(i), the commenter states: "The Tax Code provisions referenced do not contain a requirement that a borrower sign a promissory note or loan agreement." Similarly, regarding §89.207(3)(A)(ii), the commenter continues by stating: "Texas Tax Code, §32.06 does not contain language relating to a deed of trust, contract, security deed, or other security instrument signed by a borrower."

In order to charge interest under Texas law, the parties need to execute a promissory note or agreement that contains a promise to pay. This document, however, may be contained in a combination note and deed of trust that may only have the label of "deed of trust."

Under Texas Finance Code, §302.002, if no rate is specified in a written contract, the interest is limited to an annual rate of 6%. Thus, in order for a property tax lender to charge up to 18% annually, the written document containing the promise to pay must have an interest rate specified. It is the agency's position that this document would be considered a promissory note or loan agreement, which as stated earlier, may legally be included in a security document.

Regarding the references to various security instruments in proposed §89.207(3)(A)(ii), Texas Tax Code, §32.06(c)(2) contemplates that the property owner and the transferee may enter "into a contract secured by a lien on the property." The contract referred to in subsection (c)(2) is in addition to the transfer document referenced in the other subsections of the statute.

However, the commission has revised the rule in a manner to place less focus on the labels of the documents while providing guidance on what type of documents must be maintained by the licensee. As a result, in §89.207(3)(A) concerning all property tax loan transactions, proposed clauses (i) and (ii) have been combined to provide better clarity. The revised provision begins with the new phrase of requiring "all lien transfer and security documents signed by the borrowers." Adopted §89.207(3)(A)(i) includes all of the documents referenced by the two proposed clauses while preserving the flexibility of licensees to only maintain the actual lien transfer and security documents signed by the borrowers for the particular transaction in question. Additionally, the remaining provisions of §89.207(3)(A) have been renumbered accordingly.

In adopted §89.207(3)(A)(ii), the beginning of the clause has been revised to require "the application for credit or transfer of the lien." The agency believes that this terminology better reflects different documents used by the industry.

In adopted §89.207(3)(A)(v) (proposed clause (vi)), the commenter states: ""Taxing authority" is an inaccurate term and should be replaced with 'collector' to more accurately reflect the language in §32.06(b), or 'tax-assessor collector' as that term is used in §89.702." Although the commission does not believe that "taxing authority" is an inaccurate term, the commission strives to be consistent in its regulations. Therefore, to maintain uniformity with §89.702, "taxing authority" has been replaced with "tax assessor-collector" in §89.207(3)(A)(v) for this adoption.

In §89.207(3)(B), the citation to Regulation Z has been updated to incorporate the recent renumbering of this regulation by the Consumer Federal Protection Bureau.

In §89.207(3)(H) concerning copies of collections letters or notices, the agency would like to clarify that this provision may be satisfied if the licensee is able to reproduce the exact record that was sent to the borrower. Subparagraph (H) is subject to the following language in paragraph (3): "If a substantially equivalent electronic record for any of the following documents exists, a paper copy of the record does not have to be included in the property tax loan transaction file if the electronic record can be accessed upon request," Hence, these two provisions must be read together, allowing the licensee to re-create letters and notices by combining a form letter and the unique fields used to complete that letter for each borrower.
Due to informal comments received, the parenthetical proposed at the end of §89.207(3)(i) has been removed as it is not necessary.

Subparagraph (J) of §89.207(3) has experienced a number of changes since the proposal in response to informal comments received. At the end of clauses (i) and (ii) of §89.207(3)(J), the appropriate Texas Tax Code citation for judicial and non-judicial foreclosure have been added for clarity.

Regarding the notices under §89.207(3)(J)(ii)(II) - (IV) (i.e., notice to cure, notice of intent to accelerate, and notice of acceleration), these notices are not required in a judicial foreclosure. There are situations in which a licensee will begin a foreclosure in the non-judicial setting and then have the need to switch to a judicial foreclosure later in the process. In other circumstances, licensees may choose to provide the notices in subclauses (II) - (IV) to the borrowers prior to a judicial foreclosure. The amended provisions allow a licensee to utilize this method of optional notice and then if sent, require that any such notices be maintained by the licensee. Thus, to better reflect the fact that these notices are not required in a judicial foreclosure, the word "required" has been replaced by term "specified" for this adoption. Also, the phrase "if sent by a non-salaried attorney of licensee, any" has been inserted at the beginning of each provision in order to clarify when documents for which a charge may be added to the account must be retained.

In §89.207(3)(J)(ii)(IV) concerning records relating to the distribution of excess proceeds, the citations have been corrected to refer to Texas Tax Code, §34.02 and §34.04 in cases of judicial foreclosure. Additionally, §34.04 has been added to clause (ii)(XII) regarding non-judicial foreclosures to provide a more complete legal reference.

The provision regarding notice to preexisting lienholders in a non-judicial foreclosure proposed in §89.207(3)(J)(ii)(IV) has been relocated to subclause (X) for this adoption. The agency believes that the new notice provides a more logical order within the rule. The surrounding subclauses have been renumbered accordingly.

Also within §89.207(3)(J)(ii) concerning non-judicial foreclosure, the word "application" in subclause (V) has been changed to lowercase for this adoption to more accurately reflect the language used in Texas Rules of Civil Procedure, Rule 736.

The commenter also provides numerous suggested language changes related to replacing the terms "property tax lender," "licensed property tax lender," and "lender," with "licensee," "applicant," or "person," as appropriate. The commenter outlines the recommended changes as follows: "In §§§89.207(3)(H); 89.207(3)(J)(i); 89.207(3)(J)(i)(VIII); 89.207(3)(J)(i)(XIV); 89.207(6); and 89.312, the term 'property tax lender' should be replaced with 'licensee.' The term 'licensee' is already used in existing rules and in proposed new rules. Using 'licensee' in the sections above will provide consistency in terminology and reduce potential confusion. In §§89.302; 89.303(c); and, 89.309(a) the term 'property tax lender' should be deleted to provide consistency. In §89.405(c), the term 'property tax lender' should be replaced with 'applicant or licensee' for consistency. In §89.405(d)(2), the term 'property tax lender' should be replaced with 'person' for contextual accuracy. Lastly, in §89.407(a), the terms 'lender' and 'licensed property tax lender' should be replaced with 'licensee' for consistency.'

As noted earlier, the commission always strives for consistency and clarity in its rules. The commission agrees with the suggested terminology changes outlined in the preceding paragraph and has incorporated those changes for this adoption. In addition, parallel changes have been made to other rules to maintain this terminology throughout the chapter.

Section 89.301, which contains the licensing definitions, has experienced several minor revisions relating to grammar and punctuation. Two of these changes are recurring throughout the rules. First, the verb "shall" has been changed to "will" in the introductory paragraph and to "must" in paragraph (2)(E). Similar changes have been made to numerous rules in Chapter 89 by replacing "shall" with either "will" or "must," as appropriate, since the latter language is reflective of a more modern and plain language approach in regulations. Second, the hyphens have been removed from the phrases "privately held" and "publicly held," as these hyphens are deemed unnecessary by modern usage guides. This section also includes the removal of unnecessary Chapter 351 descriptors and corrections to business terminology.

Section 89.302 regarding the filing of new applications has been revised and reorganized to increase the efficiency of the licensing process and to better align the rules with the streamlined application forms prepared by the agency. First, the provisions that have been relocated to provide proper alignment with the revised licensing forms are as follows: §89.302(1)(D) concerning statutory or registered agent has been relocated to adopted paragraph (1)(A)(iii), paragraph (1)(B) concerning owners and principal parties has been relocated to adopted (1)(A)(iv), paragraph (2)(C)(vii)(II) concerning statement of records has been relocated to adopted paragraph (1)(D)(iii), paragraph (1)(A)(iii) concerning authorized signatures has been renamed "Consent form" and relocated to adopted paragraph (1)(E), paragraph (1)(J) concerning financial statements has been relocated to adopted paragraph (2)(D), and paragraph (1)(K) concerning assumed names has been relocated to paragraph (2)(E).

In particular, one of the relocated provisions relates to the creation of a new separate licensing form, which is the consent form. This provision involves some minor wording changes in addition to its relocation. In §89.302(1)(F), the following new language relating to the term "authorized individual" has been added: "Each applicant must submit a consent form signed by an authorized individual. . . . The following are authorized individuals . . . ."

Second, the wording and format of several tagslines or form titles have been revised to correspond with the new licensing forms. These title changes are found in the following adopted provisions: §89.302(1)(A), (1)(A)(i), (1)(A)(iii) - (iv), (1)(B), (1)(C), (1)(C)(i) - (ii), (1)(D), (1)(D)(i) - (iii), (1)(E), (2)(D), and (2)(E). Other changes relating to form titles may be found in §89.308(a) and §89.309(a) and (b). Additionally, any surrounding provisions affected by the relocations have been renumbered or relettered as appropriate, along with other technical corrections.

In conjunction with the reorganization of §89.302, certain provisions have experienced revised language to improve clarity and flexibility. The amendments to §89.302(1)(A)(i) accommodate applicants (e.g., Internet businesses) that will not have a location in Texas. In §89.302(1)(A)(ii), the term "statutory agent" has been replaced with "registered agent" throughout this clause. Parallel changes have also been made to §89.302(2)(C)(ii) and (iv). In reference to agents who are natural persons, a "physical residential address" is no longer required and has been replaced with a requirement for "a different address than the licensed location address." In addition, for registered agents not matching those on file with the Office of the Texas Secretary of State, an
applicant must only submit "a certification from the secretary of the company identifying the registered agent" as opposed to the current language requiring certified minutes of the appointment.

A revision reflected throughout §89.302 relates to the percentage of ownership that must be disclosed by various entities. In the current rule, some of these percentages were 5% whereas others were 10%. In evaluating the appropriate level of disclosure necessary for the agency to properly assess principal parties, the agency determined that 10% would achieve the needed information and provide more consistency for licensees. Consequently, 5% has been replaced with 10% in the following adopted provisions: §89.302(1)(A)(iv)(III)(-b-), (1)(A)(iv)(IV) and (1)(A)(iv)(V). A parallel change has also been made to §89.304, Change in Form or Proportionate Ownership, as found in subsection (c)(1).

In §89.302(1)(A)(iv)(III) concerning disclosure of partners for limited partnerships, the first sentence is inconsistent with the requirements outlined in the related items. Accordingly, to clarify and resolve this issue, the first sentence has been revised as per Texas Register guidelines: "Each partner, general and limited, fulfilling the requirements of items (a) - (c) - (d) of this subclause must be listed and the percentage of ownership stated."

Section 89.302(1)(C)(iii) concerning employment history has been revised by removing the phrase "with no gaps." As the rule still requires "a continuous 10-year [employment] history," the deleted language is not necessary.

Section 89.302(2)(A)(iv) relates to the fingerprints of individuals who have previously been licensed by the agency and who are principal parties of currently licensed entities. In response to an audit finding, the agency has clarified that while fingerprints are not generally required for these individuals, they may be required under certain circumstances. Fingerprints are not required if "fingerprints are on record with the OCC, are less than 10 years old, and have been processed by both the Texas Department of Public Safety and the Federal Bureau of Investigation." Fingerprints may be requested in order to complete the agency's records.

Regarding the entity documents under §89.302(2)(C), several changes have been made in order to increase the efficiency of the licensing process. The provisions under former (2)(C)(ii)(II) and (III), and (2)(C)(iv)(II) and (III) had required that applicants provide copies of the relevant portions of bylaws, operating agreements, and minutes addressing the number and election of officers and directors. The agency recognizes that these documents are only necessary in limited situations. Thus, these provisions have been shifted to the end of each respective clause and language has been added to reflect that such documents should only be provided upon request. The relocated provisions are adopted in §89.302(2)(C)(ii)(IV) and (V), and (2)(C)(iv)(IV) and (V).

To further streamline the licensing process, the former requirements in §89.302(2)(C)(ii)(IV)(-a-) and (2)(C)(iv)(IV)(-a-) have been deleted for this adoption. The current provisions required applicants to provide minutes elected the statutory agent. Upon review of the licensing process, the agency can streamline the process for verification of the registered agent by certification from the secretary of the company. Additionally, the verification of good standing may be obtained either directly from the Texas Comptroller of Public Accounts or upon request to the licensee if the Comptroller does not have an online record of the company.

Thus, the phrase "if requested" has been added to adopted §89.302(2)(C)(ii)(VI) and (2)(C)(iv)(VI).

Concerning the required financial statements in §89.302(2)(D), the number of days has been changed from 60 to 90, resulting in the first sentence reading as follows: "The financial statement must be dated no earlier than 90 days prior to the date of application." This revision better aligns with the quarterly reports that many applicants have readily available.

Another clarifying change concerning financial statements has been made to §89.302(2)(D). Although the types of financial statements vary by business entity, all submitted statements must comply with generally accepted accounting principles (GAAP). Complying with GAAP helps to demonstrate the applicant's budgetary integrity, which is important to the agency's determination that the applicant's financial responsibility, experience, character, and general fitness are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. Thus, language concerning GAAP compliance has been relocated to the "all entity types" provision.

Updates have been made to §89.302(2)(E) to include revised citations to the Texas Business and Commerce Code provisions concerning assumed name certificates, as relocated during the 2009 legislative session. Additionally, corrections to business terminology have been made and unnecessary language has been removed throughout §89.302(D) and (E).

Technical corrections have been made to §89.303, Transfer of License, and to §89.306, Reportable Actions After Application. In particular, these changes provide parallel formatting and improve grammar, punctuation, and internal references.

Changes have been made to §89.304 and §89.306 to minimize unnecessary transfer applications and provide additional time for licensees to notify the agency of certain actions. In cases involving changes in organizational form and mergers resulting in different parent entities, the former language in §89.304(a) and (b) requiring a transfer has been revised to instead only require a license amendment and payment of the accompanying fee under §89.310. Similarly, a license amendment and fee requirement have been added to §89.304(c) when a change in proportionate ownership results in the exact same owners still owning the business (absent an owner crossing the 10% ownership threshold). In addition, throughout §89.304 and §89.306, the deadline for notifying the agency has been extended to 14 days rather than the former 10 days after the date of the event.

Section 89.307 describes how an application for a property tax lender license is processed, including a description of when an application is complete, as well as an explanation of what may occur if an applicant fails to complete an application. Subsection (a) has been revised for this adoption to clarify when a response will be provided by the agency, as follows: "A response to an incomplete application will ordinarily be made within 14 calendar days of receipt stating that the application is incomplete and specifying the information required for acceptance." In addition, technical corrections to improve grammar and citations have been made to §89.307.

Section 89.309, relating to License Status includes technical amendments to improve clarity and grammar. Clarification has been added with regard to license expiration in §89.309(d) in order to better track the statutory provisions found in Texas Finance Code, §351.155.
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§§89.204, 89.207.

§89.207. Files and Records Required.

Each licensee must maintain records with respect to each property tax loan made under Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06 and §32.065, and make those records available for examination under Texas Finance Code, §351.008. The records required by this section may be maintained by using either a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(1) Required records. A licensee must maintain the following items:

(A) A loan register, containing the date of the property tax loan, the last name of the borrower, the "total tax lien payment amount" as defined in §89.601 of this title (relating to Fees for Closing Costs), and the loan number;

(B) General business and accounting records, including receipts, documents, canceled checks, or other records for each disbursement made at the borrower's direction or request, or made on his behalf or for his benefit, including foreclosure or legal fees applied to the borrower's account;

(C) Advertising records, including examples of all written and electronic communications soliciting loans (including scripts of radio and television broadcasts, and reproductions of billboards and signs not at the licensed place of business) for a period of not less than one year from the date of use or until the next examination by OCCC staff, in order to show compliance with Texas Finance Code, §341.403;

(D) Adverse action records regarding all applications relating to Texas Finance Code, Chapter 351 property tax loans maintained for 25 months for consumer credit and 12 months for business credit; and

(E) An official correspondence file, including all communications from the OCCC, copies of correspondence and reports addressed to the OCCC, and examination reports issued by the OCCC.

(2) Record of individual borrower's account. A separate record must be maintained for the account of each borrower and the record must contain at least the following information on each loan:

(A) Loan number as recorded on loan register;

(B) Loan schedule and terms itemized to show:

(i) date of loan;

(ii) number of installments;

(iii) due date of installments;

(iv) amount of each installment; and

(v) maturity date;

(C) Name, address, and telephone number of borrower;

(D) Names and addresses of co-borrowers, if any;

(E) Legal description of real property;

(F) Principal amount;

(G) Total interest charges, including the scheduled base finance charge, points (i.e., prepaid finance charge), and per diem interest;

SUBCHAPTER B. AUTHORIZED ACTIVITIES

7 TAC §§89.204, 89.205, 89.207

These amendments and new section are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the Finance Commission the authority to ensure compliance with the property tax lender chapter (Chapter 351) and Texas Tax Code, §32.06 and §32.065.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.
(H) Amount of official fees for recording, amending, or continuing a notice of security interest that are collected at the time the loan is made;

(I) Individual payment entries itemized to show:

(i) date payment received (dual postings are acceptable if date of posting is other than date of receipt);

(ii) actual amounts received for application to principal and interest; and

(iii) actual amounts paid for default, deferment, or other authorized charges;

(J) Any refunds of unearned charges that are required in the event a loan is prepaid in full, including records of final entries, and entries to substantiate that refunds due were paid to borrowers, with refund amounts itemized to show interest charges refunded, including the refund of any unearned points;

(K) Collection contact history, including a written or electronic record of each contact made by a licensee with the borrower or any other person and each contact made by the borrower with the licensee, in connection with amounts due, with each record including the date, method of contact, contacted party, person initiating the contact, and a summary of the contact.

(3) Property tax loan transaction file. A licensee must maintain a paper or imaged copy of a property tax loan transaction file for each individual property tax loan or be able to produce the same information within a reasonable amount of time. The property tax loan transaction file must contain documents that show the licensee's compliance with applicable law, including Texas Finance Code, Chapter 351; Texas Tax Code, §§32.06 and 32.065, and any applicable state and federal statutes and regulations. If a substantially equivalent electronic record for any of the following documents exists, a paper copy of the record does not have to be included in the property tax loan transaction file if the electronic record can be accessed upon request. The property tax loan transaction file must include copies of the following records or documents, unless otherwise specified:

(A) For all property tax loan transactions:

(i) all lien transfer and security documents signed by the borrowers, including any promissory note, loan agreement, deed of trust, contract, security deed, other security instrument, or other lien transfer document, executed in accordance with or under Texas Tax Code, §§32.06 or 32.065, or Texas Finance Code, §351.002(2)(C);

(ii) the application for credit or transfer of the lien and any other written or recorded information used in evaluating the application;

(iii) the disclosure statement to property owner as required by Texas Tax Code, §§32.06(a-4)(1) and 89.504 of this title (relating to Requirements for Disclosure Statement to Property Owner) and §89.506 of this title (relating to Disclosures), including verification of delivery of the statement;

(iv) the sworn document authorizing transfer of tax lien as required by Texas Tax Code, §32.06(a-1) and 89.701 of this title (relating to Sworn Document Authorizing Transfer of Tax Lien), including written documentation to support that the sworn document was sent by certified mail to any mortgage servicer and to each holder of a recorded first lien encumbering the property;

(v) the certified statement of transfer of tax lien as required by Texas Tax Code, §§32.06(b) and 89.702 of this title (relating to Certified Statement of Transfer of Tax Lien), including information verifying the date that the certified statement was received by the licensee from the tax assessor-collector;

(vi) a final itemization of the actual fees, points, interest, costs, and charges that were charged at closing and to whom the charges were paid as specified by Texas Tax Code, §32.06(e);

(vii) if available, any tax certificate or other similar record used to determine the status of a tax account for the property subject to the tax lien as required by Texas Tax Code, §32.06(a-2) or authorization by property owner to pay the taxes;

(viii) copies of any other agreements or disclosures signed by the borrower applicable to the property tax loan;

(B) If the property is residential property owned and used by the property owner for personal, family, or household use, the right of rescission as specified by Texas Tax Code, §§32.06(d-1) and Truth in Lending (Regulation Z), 12 C.F.R. §1026.23;

(C) If requested, copies of any payoff statements issued by the licensee or its agent as required by Texas Tax Code, §§32.06(f-3) and 89.603 of this title (relating to Fee for Payoff Statement or for Information on Current Balance Owed);

(D) If the property tax loan is delinquent for 90 consecutive days, a notice of delinquency as required by Texas Tax Code, §§32.06(f) including evidence that the notice was sent by certified mail;

(E) If received by the licensee, a copy of the notice of delinquency to the licensee from the mortgage servicer or holder of the first lien as required by Texas Tax Code, §§32.06(f-1) and 89.505 (relating to Requirements for Notice of Delinquency to Transferee) and §89.506 of this title;

(F) If the property tax loan is paid off or otherwise satisfied, a copy of the release of lien as required by Texas Tax Code, §§32.06(b);

(G) If fees are assessed, charged, or collected after closing, copies of the receipts, invoices, checks or other records substantiating the fees as authorized by Texas Finance Code, §351.0021 and Texas Tax Code, §§32.06(e-1) including the following:

(i) if the licensee acquires collateral protection insurance, a copy of the insurance policy or certificate of insurance and the notice required by Texas Finance Code, §307.052; and

(ii) receipts or invoices along with proof of payment for attorney's fees assessed, charged, and collected under Texas Finance Code, §351.0021(a)(4) and §351.0021(a)(5);

(H) Copies of any collection letters or notices sent by the licensee or its agent to the borrower;

(I) For a property tax loan where any separate disclosures or notices have been given, copies of the disclosures and notices sent;

(J) For property tax loan transactions involving a foreclosure or attempted foreclosure, the following records required by Texas Tax Code, Chapters 32 and 33:

(i) For transactions involving judicial foreclosures under Texas Tax Code, §32.06(c)(1):

(I) any records pertaining to a judicial foreclosure including records from the licensee's attorneys, the court, or the borrower or borrower's agent;

(II) if sent by a non-salaried attorney of the licensee, any notice to cure the default sent to the property owner and each holder of a recorded first lien on the property as specified by Texas Finance Code, §351.0021(a)(4);
Tax Code, §32.06(c-1)(1)(C) and Texas Property Code, §51.002(d) including verification of delivery of the notice;

(III) if sent by a non-salaried attorney of the licensee, any notice of intent to accelerate sent to the property owner and each holder of a recorded first lien on the property as specified by Texas Tax Code, §32.06(c-1)(1)(C) including verification of delivery of the notice;

(IV) if sent by a non-salaried attorney of the licensee, any notice of acceleration sent to the property owner and each holder of a recorded first lien on the property as specified by Texas Tax Code, §32.06(c-1)(1)(C);

(V) any written documentation that confirms that the borrower has deferred their property tax on the property subject to the property tax loan as permitted under Texas Tax Code, §33.06, such as the Tax Deferral Affidavit for 65 or Over or Disabled Homeowner, Form 50-126 filed with the appraisal district, attorney, or court;

(VI) records relating to the distribution of excess proceeds as required by Texas Tax Code, §34.02 and §34.04;

(VII) the foreclosure deed upon sale of the property;

(VIII) if the property is purchased at the foreclosure sale by the licensee, copies of receipts or invoices substantiating any amounts reasonably spent by the purchaser in connection with the property as costs within the meaning of Texas Tax Code, §34.21(g);

(ii) For transactions involving non-judicial foreclosures under Texas Tax Code, §32.06(c)(2):

(I) the notice to cure the default sent to the property owner and each holder of a recorded first lien on the property as required by Texas Tax Code, §32.06(c-1)(1)(C) and Texas Property Code, §51.002(d) including verification of delivery of the notice;

(II) the notice of intent to accelerate sent to the property owner and each holder of a recorded first lien on the property as required by Texas Tax Code, §32.06(c-1)(1)(C) including verification of delivery of the notice;

(III) the notice of acceleration sent to the property owner and each holder of a recorded first lien on the property as required by Texas Tax Code, §32.06(c-1)(1)(C);

(IV) any written documentation that confirms that the borrower has deferred their property tax on the property subject to the property tax loan as permitted under Texas Tax Code, §33.06, such as the Tax Deferral Affidavit for 65 or Over or Disabled Homeowner, Form 50-126 filed with the appraisal district, attorney, or court;

(V) the application for Order for Foreclosure under Texas Rules of Civil Procedure, Rule 736.1;

(VI) copies of any returns of citations issued under Texas Rules of Civil Procedure, Rule 736.3, showing the date and time the citation was placed in the custody of the U.S. Postal Service;

(VII) copies of any responses filed contesting the Application for Order for Foreclosure as described in Texas Rules of Civil Procedure, Rule 736.5;

(VIII) the motion and proposed order to obtain a default order, if any, under Texas Rules of Civil Procedure, Rule 736.7;

(IX) the order granting or denying the application for foreclosure as specified under Texas Rules of Civil Procedure, Rule 736.8;

(X) the notice provided to the recorded preexisting lienholder, at least, 60 days before the date of the proposed foreclosure as required by Texas Tax Code, §32.06(c-1)(2);

(XI) the notice of sale as required by Texas Property Code, §51.002(b) including verification of delivery of the notice;

(XII) records relating to the distribution of excess proceeds as required by Texas Tax Code, §34.021 and §34.04;

(XIII) the foreclosure deed upon sale of the property;

(XIV) if the property is purchased at the foreclosure sale by the licensee, copies of receipts or invoices substantiating any amounts reasonably spent by the purchaser in connection with the property as costs within the meaning of Texas Tax Code, §34.21(g);

(K) Any other documents necessary to establish the licensee's compliance with the law.

(4) Corrective entries to the borrower's account record, if justified, including the reason and supporting documentation for each corrective entry and any supporting documentation justifying the corrective entry, maintained under the following documentation guidelines:

(A) Dual recording in collection contact history permissible. The reason for the corrective entry may also be recorded in the collection contact history of the borrower's account record.

(B) Supporting documentation. The supporting documentation justifying the corrective entry may be maintained in the individual borrower's account file or properly stored and indexed in a licensee's optically imaged recordkeeping system.

(C) Manual recordkeeping systems. If a licensee manually maintains the borrower's account record, the licensee must properly correct an improper entry by drawing a single line through the improper entry and entering the correct information above or below the improper entry. No erasures or other obliterations may be made on the payments received or collection contact history section of the manual borrower's account record.

(5) Record of loans in litigation and foreclosure.

(A) An index of each foreclosure as it occurs and each legal action by or against the licensee as it is initiated must be recorded. The index must show the borrower's name, account number, and date of action.

(B) All loan records, correspondence, and any other information pertinent to the litigation or foreclosure must be maintained in the borrower's account folders or files.

(6) Disaster recovery plan. A licensee must maintain a sufficient disaster recovery plan to ensure that property tax loan transaction information is not destroyed, lost, or damaged.

(7) Retention and availability of records. All books and records required by this subsection must be available for inspection at any time by Office of Consumer Credit Commissioner staff, and must be retained for a period of four years from the date of the contract, two years from the date of the final entry made thereon by the licensee, whichever is later, or a different period of time if required by federal law. The records required by this subsection must be available or accessible at an office in the state designated by the licensee except when the property tax loan transactions are transferred under an agreement which gives the commissioner access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the
state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

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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For further information, please call: (512) 936-7621

SUBCHAPTER C. APPLICATION PROCEDURES

7 TAC §§89.301 - 89.304, 89.306 - 89.310, 89.312

These amendments and new section are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the Finance Commission the authority to ensure compliance with the property tax lender chapter (Chapter 351) and Texas Tax Code, §32.06 and §32.065.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.302. Filing of New Application.

An application for issuance of a new license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner’s instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

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

(A) Application for license.

(i) Location information. A physical street address must be listed for the applicant’s proposed lending address, or if the applicant will have no such location, a statement to that effect must be provided. For applicants with a proposed location in Texas, a post office box or a mail box location at a private mail-receiving service generally may not be used. If the address has not yet been determined or if the application is for an inactive license, then the application must so indicate.

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

(iii) Registered agent. The registered agent must be provided by each applicant. The registered agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the registered agent is a natural person, the address must be a different address than the licensed location address. If the applicant is a corporation or a limited liability company, the registered agent should be the one on file with the Office of the Texas Secretary of State. If the registered agent is not the same as the agent filed with the Office of the Texas Secretary of State, then the applicant must submit a certification from the secretary of the company identifying the registered agent.

(iv) Owners and principal parties.

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

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

(III) Limited partnerships. Each partner, general and limited, fulfilling the requirements of items (a) - (c) of this subclause must be listed and the percentage of ownership stated.

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

(b) Limited partners. The applicant should provide a complete list of all limited partners owning 10% or more of the partnership.

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

(IV) Corporations. Each officer and director must be named. Each shareholder holding 10% or more of the voting stock must be named if the corporation is privately held. If a parent corporation is the sole or partial owner of the proposed business, a narrative or diagram must be included that describes each level of ownership of 10% or greater.

(V) Limited liability companies. Each "manager," "officer," and "member" owning 10% or more of the company, as those terms are defined in Texas Business Organizations Code, §1.002, and each agent owning 10% or more of the company must be listed. If a member is a legal entity and not a natural person, a narrative or diagram must be included that describes each level of ownership of 10% or greater.

(VI) Trusts or estates. Each trustee or executor, as appropriate, must be listed.

(VII) All entity types. If a parent entity is a different type of legal business entity than the applicant, the parent entity’s owners and principal parties should be disclosed according to the parent’s entity type.

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

(i) Personal affidavit. Each individual meeting the definition of "principal party" as defined in §89.301 of this title (relating to Definitions) or who is a person responsible for day-to-day operations must provide a personal affidavit. All requested information must be provided.

(ii) Personal questionnaire. Each individual meeting the definition of "principal party" as defined in §89.301 of this title or who is a person responsible for day-to-day operations must provide a personal questionnaire. Each question must be answered. If any question, except question 1, is answered "yes," an explanation must be provided.

(iii) Employment history. Each individual meeting the definition of "principal party" as defined in §89.301 of this title or who is a person responsible for day-to-day operations must provide an employment history. Each principal party should provide a continuous 10-year history, accounting for time spent as a student, unemployed, or retired. The employment history must also include the individual's association with the entity applying for the license.

(D) Additional requirements.

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

(ii) Business operating plan. Each applicant must provide a brief narrative explaining the type of lending operation that is planned. This narrative should discuss each of the following topics:

(I) the source of customers;
(II) the purpose(s) of loans;
(III) the size of loans;
(IV) the source of working capital for planned operations;
(V) whether the applicant will only be arranging or negotiating loans for another lender or financing entity;
(VI) if the applicant will only be arranging or negotiating loans for another lender or financing entity, the licensee must also provide:

(-a-) a list of the lenders for whom the applicant will be arranging or negotiating loans;
(-b-) whether the loans will be collected at the location where the loans are made; and
(-c-) if the loans will not be collected at the location where the loans are made, the identification of the person or firm that will be servicing the loans, including the location at which the loans will be serviced, and a detailed description of the process to be utilized in collections.

(iii) Statement of records. Each applicant must provide a statement of where records of Texas transactions will be maintained. If these records will be maintained at a location outside of Texas, the applicant must acknowledge responsibility for the travel cost associated with examinations in addition to the assessment fees or agree to make all records available for examination in Texas.

(E) Consent form. Each applicant must submit a consent form signed by an authorized individual. Electronic signatures will be accepted in a manner approved by the commissioner. The following are authorized individuals:

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

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

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

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

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

(2) Other required filings.

(A) Fingerprint.

(i) For all persons meeting the definition of "principal party" as defined in §89.301 of this title, a complete set of legible fingerprints must be provided. All fingerprints should be submitted in a format prescribed by the OCCC and approved by the Texas Department of Public Safety and the Federal Bureau of Investigation.

(ii) For limited partnerships, if the owners and principal parties under paragraph (1)(A)(iv)(III)(a-) of this section does not produce a natural person, the applicant must provide a complete set of legible fingerprints for individuals who are associated with the general partner as principal parties.

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

(iv) For individuals who have previously been licensed by the OCCC and principal parties of entities currently licensed, fingerprints are generally not required if the fingerprints are on record with the OCCC, are less than 10 years old, and have been processed by both the Texas Department of Public Safety and the Federal Bureau of Investigation. Upon request, individuals and principal parties previously licensed by the OCCC may be required to submit a new set of fingerprints in order to complete the OCCC's records.

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

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

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

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

(C) Entity documents.

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

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

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

(II) a certification from the secretary of the corporation identifying the current officers and directors as listed in the owners and principal parties section of the application for license form;

(III) if the registered agent is not the same as the one on file with the Office of the Texas Secretary of State, a certification from the secretary of the corporation identifying the registered agent;

(IV) if requested, a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation;

(V) if requested, a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed in the owners and principal parties section of the application for license form;

(VI) if requested, a certificate of good standing from the Texas Comptroller of Public Accounts.

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

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

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

(II) a certification from the secretary of the company identifying the current officers and directors as listed in the owners and principal parties section of the application for license form;

(III) if the registered agent is not the same as the one on file with the Office of the Texas Secretary of State, a certification from the secretary of the company identifying the registered agent;

(IV) if requested, a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations;

(V) if requested, a copy of the minutes of company meetings that record the election of all current officers and directors as listed in the owners and principal parties section of the application for license form;

(VI) if requested, a certificate of good standing from the Texas Comptroller of Public Accounts.

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

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

(vii) Foreign entities. In addition to the items required by this section, a foreign entity must provide a certificate of authority to do business in Texas, if applicable.

(viii) Formation document alternative. As an alternative to the entity-specific formation document applicable to the applicant's entity type (e.g., for a corporation, articles of incorporation), an applicant may submit a "certificate of formation" as defined in Texas Business Organizations Code, §1.002, if the certificate of formation provides the entity formation information required by this section for that entity type.

(D) Financial statement and supporting financial information.

(i) All entity types. The financial statement must be dated no earlier than 90 days prior to the date of application. Applicants may also submit audited financial statements dated within one year prior to the application date in lieu of completing the supporting financial information. All financial statements must be certified as true, correct, and complete, and must comply with generally accepted accounting principles (GAAP).

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

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

(iv) Corporations and limited liability companies. Corporations and limited liability companies must file a balance sheet. The information requested in the supporting financial information must be submitted. The balance sheet and supporting financial information must be as of the same date. Financial statements are generally not required of related parties, but may be required if the commissioner believes they are relevant. The financial information for the corporate or limited liability company applicant should contain no personal financial information.

(v) Trusts and estates. Trusts and estates must file a balance sheet. The information requested in the supporting financial information must be submitted. The balance sheet and supporting financial information must be as of the same date. Financial statements are generally not required of related parties, but may be required if the commissioner believes they are relevant. The financial information for the trust or estate applicant should contain no personal financial information.

(E) Assumed name certificates. For any applicant that does business under an "assumed name" as that term is defined in Texas Business and Commerce Code, §71.002, an assumed name certificate must be filed as provided in this subparagraph.

(i) Unincorporated applicants. Unincorporated applicants using or planning to use an assumed name must file an assumed name certificate with the county clerk of the county where the proposed
§89.302. Transfer of License.

(a) Definition. As used in this chapter, a "transfer of ownership" does not include a change in proportionate ownership as defined in §89.304 of this title (relating to Change in Form or Proportionate Ownership). Transfer of ownership includes the following:

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

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

(3) any change in ownership of a licensed limited partnership interest:
   
   (A) in which a limited partner owning 10% or more relinquishes that owner's entire interest;
   
   (B) in which a new limited partner obtains an ownership interest of 10% or more;
   
   (C) in which a general partner relinquishes that owner's entire interest; or
   
   (D) in which a new general partner obtains an ownership interest (transfer of ownership occurs regardless of the percentage of ownership exchanged of the general partner);

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

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

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

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

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

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

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

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

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

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

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

(b) Approval of transfer. No property tax lender license may be sold, transferred or assigned without written approval by the commissioner.

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

(1) Required application information.

   (A) New licensees filing transfers. The information required for new license applications under §89.302 of this title (relating to Filing of New Application) must be submitted by new licensees filing transfers. The instructions in §89.302 of this title are applicable to these filings. In addition, evidence of transfer of ownership as described in paragraph (2) of this subsection must also be submitted.

   (B) Existing licensees filing transfers. If the applicant is currently licensed and filing a transfer, the applicant must provide the information that is unique to the transfer event, including the application for license, disclosure questions, owners and principal parties, and a new financial statement, as provided in of §89.302 of this title. The instructions in §89.302 of this title are applicable to these filings. The person responsible for the day-to-day operations listed on the application for license for the transfer event must file a personal affidavit, personal questionnaire, and employment history, if not previously filed. Other information required by §89.302 of this title need not be filed if the information on file with the OCCC is current and valid. In addition, evidence of transfer of ownership as described in paragraph (2) of this subsection must also be submitted.

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

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

   (B) a copy of the stock purchase agreement or other evidence of acquisition if voting stock of a corporate licensee has been purchased or otherwise acquired;
(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

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

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

§89.309. License Status.

(a) Inactivation of active license. A licensee may cease operating under a license and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the commissioner. The notice must include the new mailing address for the license, the effective date of the inactivation, and the fee for amending the license. A licensee must continue to pay the yearly renewal fees for an inactive license as outlined in §89.310 of this title (relating to Fees), or the license will expire.

(b) Activation of inactive license. A licensee may activate an inactive license by giving notice of the intended activation not less than 30 calendar days prior to the anticipated activation date. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the commissioner. The notice must include the contemplated new address of the licensed office, the approximate date of activation, and the fee for amending the license as outlined in §89.310 of this title.

(c) Voluntary surrender of license. Subject to §89.407(b) of this title (relating to Effect of Revocation, Suspension, or Surrender of License), a licensee may voluntarily surrender a license by providing written notice of the cessation of operations, a request to surrender the license, and by submitting the license certificate. A voluntary surrender will result in cancellation of the license.

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

§89.312. Property Tax Employee License Under Nationwide Mortgage Licensing System and Registry.

As required by Texas Finance Code, §351.0515, a licensee's individual employees who, for actual or expected compensation or gain, act as residential mortgage loan originators in the making, transacting, or negotiating of a property tax loan for a principal dwelling, are required to obtain a license through the Nationwide Mortgage Licensing System and Registry.

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

Filed with the Office of the Secretary of State on June 15, 2012.

TRD-201203150
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: July 5, 2012
Proposal publication date: May 4, 2012
For further information, please call: (512) 936-7621

SUBCHAPTER D. LICENSE
7 TAC §§89.405 - 89.407, 89.409

These amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the Finance Commission the authority to ensure compliance with the property tax lender chapter (Chapter 351) and Texas Tax Code, §32.06 and §32.065.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

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

(a) Criminal history information. Upon submission of an application for a license, a principal party of an applicant for a license is investigated by the commissioner. In submitting an application for a license, a principal party of an applicant for a license is required to provide fingerprint information to the commissioner. Fingerprint information is forwarded to the Texas Department of Public Safety and to the Federal Bureau of Investigation to obtain criminal history record information. The commissioner will continue to receive information on new criminal activity reported after the fingerprints have been processed. In the case of a new application or if the commissioner finds a fact or condition that existed or, had it existed the license would have been refused, the commissioner may use the criminal history record information obtained from law enforcement agencies, or other criminal history information provided by the applicant or other sources, to issue a denial or initiate an enforcement action. Criminal history information relates to the OCCC’s assessment of good moral character, and the information gathered is relevant to the licensing or enforcement action decision as described in subsections (b) - (d) of this section.

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

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

(1) the nature and seriousness of the crime;
(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the principal party previously had been involved; and
(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a license holder.

(d) Effect of criminal convictions on applicant or licensee.

(1) Effect of criminal convictions involving moral character. The commissioner may deny an application for a license, or suspend or revoke a license, if the applicant or licensee has a principal party who has been convicted of any felony or of a crime involving moral character that is reasonably related to the applicant's or licensee's fitness to hold a license or to operate lawfully and fairly within Texas Finance Code, Chapter 351. For purposes of this section, the crimes listed in subparagraphs (A) - (H) of this paragraph are considered to be crimes involving moral character:

(A) Fraud, misrepresentation, deception, or forgery;
(B) Breach of trust or other fiduciary duty;
(C) Dishonesty or theft;
(D) Assault;
(E) Violation of a statute governing lending of this or another state;
(F) Failure to file a required report with a governmental body, or filing a false report;
(G) Attempt, preparation, or conspiracy to commit one of the preceding crimes; or
(H) Attempt, preparation, or conspiracy to evade Texas Finance Code, Chapter 351 and its provisions.

(2) Effect of other criminal convictions. The commissioner may deny an application for a license or revoke an existing license, if a principal party of the applicant or licensee has been convicted of a crime that directly relates to the duties and responsibilities of a person that originates or obtains loans under Texas Finance Code, Chapter 351. Adverse action by the commissioner in response to a crime specified in this section is subject to mitigating factors and rights of the applicant or licensee, as found in §89.406 of this title (relating to Crimes Directly Related to Fitness for License; Mitigating Factors).

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

(a) Effect on existing contracts. Revocation, suspension, or surrender of a license does not affect a preexisting contract between a licensee and a borrower, except no interest may be charged or received by the licensee following the revocation, suspension, or surrender of its license. Alternatively, a licensee whose license is revoked or suspended may transfer or sell its accounts to a licensee, which may continue to charge or receive the contracted rate of interest within the authority of Texas Finance Code, Chapter 351.

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

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

Filed with the Office of the Secretary of State on June 15, 2012.

TRD-201203151
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: July 5, 2012
Proposal publication date: May 4, 2012
For further information, please call: (512) 936-7621

SUBCHAPTER E. DISCLOSURES

7 TAC §89.504

These amendments are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the Finance Commission the authority to ensure compliance with the property tax lender chapter (Chapter 351) and Texas Tax Code, §32.06 and §32.065.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.504. Requirements for Disclosure Statement to Property Owner.

(a) Required elements. A disclosure statement under Texas Tax Code, §32.06(a-4)(1) to be provided to a property owner before the execution of a tax lien transfer must contain the following required elements:

(1) the property tax lender's name, principal business address, and license number;
(2) a statement that the property owner currently has a lien against the owner's property for unpaid property taxes;
(3) a statement that the property owner can pay the taxing unit(s) directly;
(4) a statement that the property owner may authorize that the lien of the taxing unit(s) be transferred to the property tax lender;
(5) a statement that unless the property owner agrees in writing, the property tax lender may not include non-delinquent taxes in the property tax loan;
(6) a statement that the property tax loan may include unpaid property taxes, penalties, interest, and collection costs paid as shown on the tax receipt;
(7) a statement that the property tax lender may also assess closing costs and interest not to exceed 18%;
(8) a statement that the property tax loan is superior to any other preexisting lien on the property;

(9) a statement that if the property is a homestead, disabled persons or persons age 65 or older are entitled to tax deferral under Texas Tax Code, §33.06;

(10) a statement that there may be alternatives available to the property owner instead of the property tax loan, (e.g., entering into a payment installment agreement with the taxing unit(s), financing options through an existing mortgage lender or other private lenders, borrowing from savings or family members);

(11) a statement that if the property owner does not pay, the property owner may lose the property;

(12) a statement that the tax lien may be considered a default by any mortgage holder with a lien on the same property, and the only way to correct the default is to pay off the taxes and have the lien released;

(13) a statement that any secured loan may be foreclosed if the loan is in default, and the cost of a foreclosure, either tax lien or mortgage, may be added to the amount owed by the property owner;

(14) a statement that the property owner may contact the Office of Consumer Credit Commissioner about questions or problems, listing the OCCC's address, toll-free consumer helpline, and website, as follows: 2601 North Lamar Boulevard, Austin, Texas 78705-4207, (800) 538-1579, www.occcl.state.tx.us;

(15) a statement that the property owner may seek the advice of an attorney or another third party before signing a property tax loan; and

(16) a statement that the property owner should ask about the terms of any loan and should read any document before signing it.

(b) Single page required. The disclosure statement required by §89.506(a) of this title (regarding Disclosures) must fit on one standard-size sheet of paper (8 1/2 by 11 inches). The disclosure statement must be delivered in a manner that does not minimize its significance.

(c) Delivery.

(1) Face-to-face interview before closing. In the case of a face-to-face interview, a property tax lender must provide a disclosure statement containing all of the elements outlined by subsection (a) of this section, as prescribed by Figure: 7 TAC §89.506(a) of this title, to the property owner at the time of the interview. A property owner present at the interview may sign an acknowledgment verifying receipt of the disclosure statement at that time.

(2) No face-to-face interview. If there is no face-to-face interview, a licensee must deliver a disclosure statement containing all of the elements outlined by subsection (a) of this section, as prescribed by Figure: 7 TAC §89.506(a) of this title, to the owner of the property.

(A) Method of delivery. The disclosure statement may be delivered by U.S. mail, with prepaid first-class postage, or via facsimile or email if the property owner consents. Alternatively, licensees may deliver the disclosure statement by certified mail with return receipt requested, by using a commercial delivery service with tracking abilities, or by using a courier service.

(B) Timing of delivery. The disclosure statement must be delivered within three business days from receipt of the property owner's application for a property tax loan, or within three business days from the date that the property tax lender first has knowledge of the property owner's agreement to enter into a property tax loan with the property tax lender.

(C) Co-applicants. If property owners who are co-applicants provide the same mailing address, one copy delivered to that address is sufficient. If different addresses are shown by co-applicants, a copy must be delivered to each of the co-applicants.

(d) Verification of delivery.

(1) At time of face-to-face interview before closing. At the time of a face-to-face interview, verification that a disclosure was provided under this section is not required, but may be established by a signed and dated acknowledgment of the property owner obtained at the time of the interview.

(2) No face-to-face interview. If there is no face-to-face interview, the property tax lender must deliver the disclosure statement to the property owner as prescribed in subsection (c)(2) of this section.

(A) Verification of delivery by mail. The property tax lender must allow a reasonable period of time for delivery by mail. A period of three calendar days, not including Sundays and federal legal public holidays, constitutes a rebuttable presumption for sufficient mailing and delivery.

(B) Verification of delivery via facsimile. For disclosures delivered via facsimile, a dated facsimile confirmation page indicating that the disclosure statement was successfully transmitted to the fax number provided by the property owner will constitute a rebuttable presumption for sufficient delivery.

(C) Verification of delivery by certified mail with return receipt requested. For disclosures delivered by certified mail with return receipt requested, a dated return receipt indicating that the disclosure statement was successfully delivered to the property owner's address will constitute verification of delivery.

(D) Verification of delivery by commercial delivery service with tracking abilities. For disclosures delivered by commercial delivery service, a dated receipt indicating that the disclosure statement was successfully delivered to the property owner's address will constitute verification of delivery.

(E) Verification of delivery by courier service. For disclosures delivered by courier service, a dated receipt indicating that the disclosure statement was successfully delivered to the property owner will constitute verification of delivery.

(F) Verification of delivery by email. For disclosures delivered via email, a dated reply email indicating that the disclosure statement was successfully delivered to the property owner will constitute verification of delivery. Alternatively, a property owner's affirmative consent to electronic delivery of the disclosure in accordance with §101(c) of the Electronic Signatures in Global and National Commerce Act will constitute a rebuttable presumption for sufficient delivery.

(e) Acknowledgment at time of closing. At the time of closing, a property tax lender may deliver an additional copy of the disclosure statement prescribed by Figure: 7 TAC §89.506(a) of this title, but is not required to do so. The property tax lender must obtain a dated acknowledgment signed by the property owner stating that the property owner received the disclosure statement prior to closing. The acknowledgment of receipt may be included on the disclosure form as provided in §89.507(a)(4) of this title (relating to Permissible Changes).

(1) Married property owners. If the property is designated as a homestead, the signatures of both spouses must be obtained by the property tax lender in order to acknowledge delivery of a disclosure under this section.

(2) Property owned by a legal entity. If the property is owned by a legal entity (e.g., a living trust), the signature of a person
with authority to sign on behalf of the legal entity must be obtained by
the property tax lender in order to acknowledge delivery of a disclosure
under 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 June 15, 2012.

TRD-201203152
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7621

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SUBCHAPTER F. COSTS AND FEES

7 TAC §89.602

These amendments are adopted under Texas Finance Code
§11.304, which authorizes the Finance Commission to adopt
rules to enforce Title 4 of the Texas Finance Code. Additionally,
Texas Finance Code, §351.007 grants the Finance Commis-
SION the authority to ensure compliance with the property tax
lender chapter (Chapter 351) and Texas Tax Code, §32.06 and
§32.065.

The statutory provisions affected by the adoption are contained
in Texas Finance Code, Chapter 351, and Texas Tax Code,
§32.06 and §32.065.

§89.602. Fee for Filing Release.

(a) Allowable fee components. Under Texas Tax Code,
§32.06(b), a licensee may charge the following for filing the release:

(1) the actual cost charged by the county clerk for filing the
release;

(2) the actual cost of attorney's fees paid to an outside at-
torney who is not an employee of the property tax lender for preparing
the release; and

(3) an administrative fee not to exceed $35 for services re-
lated to filing provided by the property tax lender (e.g., costs to mail or
deliver release to county clerk or taxing unit(s)).

(b) Potential limitations on administrative fee. The adminis-
trative fee provided by subsection (a)(3) of this section may be limited
by other law.

(c) Maximum aggregate fee. The maximum aggregate fee for
all of the items provided in subsection (a) of this section shall not ex-
cess $110.

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-201203153

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7621

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SUBCHAPTER G. TRANSFER OF TAX LIEN

7 TAC §89.701, §89.702

These amendments are adopted under Texas Finance Code
§11.304, which authorizes the Finance Commission to adopt
rules to enforce Title 4 of the Texas Finance Code. Additionally,
Texas Finance Code, §351.007 grants the Finance Commis-
sion the authority to ensure compliance with the property tax
lender chapter (Chapter 351) and Texas Tax Code, §32.06 and
§32.065.

The statutory provisions affected by the adoption are contained
in Texas Finance Code, Chapter 351, and Texas Tax Code,
§32.06 and §32.065.

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-201203154
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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Proposal publication date: May 4, 2012
For further information, please call: (512) 936-7621

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PART 6. CREDIT UNION
DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS,
MERGERS, LIQUIDATIONS

SUBCHAPTER H. INVESTMENTS

7 TAC §91.808

The Credit Union Commission (the Commission) adopts amend-
ments to §91.808, concerning Reporting Investment Activities
to the Board of Directors, without changes to the proposed text
published in the March 2, 2012, issue of the Texas Register (37
TexReg 1449). The amendments clarify which investments must
be reported monthly to the board and ensure that these reporting
requirements are consistent with the limitations of §91.803(a) of
this subchapter.

The amendments are adopted to align the rule's standards with
that of §91.803(a).

The Commission received no comments on these proposed
changes.

The amendments are adopted under Texas Finance Code,
§15.402, which authorizes the Commission to adopt reasonable
rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code, §124.351 and §124.352, which address permitted investments and investment limits.

The specific sections affected by the amendments are Texas Finance Code, §124.351 and §124.352.

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

Filed with the Office of the Secretary of State on June 18, 2012.

TRD-201203180
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: July 8, 2012
Proposal publication date: March 2, 2012
For further information, please call: (512) 837-9236

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION
SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.13

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 1, Subchapter A, §1.13, concerning Adjudicative Hearing Procedures, without changes to the proposed text as published in the April 27, 2012, issue of the Texas Register (37 TexReg 2930) and will not be republished.

REASONED JUSTIFICATION. In order for State Office of Administrative Hearings (SOAH) to have jurisdiction to hear the Department's contested cases, the Department must designate SOAH to conduct all its hearings by administrative rule. Therefore, the new section designates SOAH to conduct adjudicative hearings on behalf of the Governing Board of the Department and provides procedures for referral of matters to SOAH, for service of pleadings and other notices, and for issuance of a Proposal for Decision.

The Department accepted public comments between April 27, 2012, and May 29, 2012. Comments regarding the new section were accepted in writing and by fax. No comments were received concerning the new section.

The Board approved the final order adopting the new section on June 14, 2012.

STATUTORY AUTHORITY. The new section is adopted pursuant to the authority of Chapter 2306 of the Texas Government Code, which provides the Board and the Department with the authority to adopt rules governing the administration of the Department and its programs; specifically including §§2306.141, 2306.053, and 2306.041 - 2306.046.

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

Filed with the Office of the Secretary of State on June 15, 2012.

TRD-201203170
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: July 5, 2012
Proposal publication date: April 27, 2012
For further information, please call: (512) 475-3916

10 TAC §1.14

The Texas Department of Housing and Community Affairs (the "Department") adopts the new 10 TAC Chapter 1, Subchapter A, §1.14, concerning Administrative Penalties, without changes to the proposed text as published in the April 27, 2012, issue of the Texas Register (37 TexReg 2932) and will not be republished.

REASONED JUSTIFICATION. In 2007, the Legislature authorized the Department to impose penalties on any person who violates any provision of Chapter 2306 of the Texas Government Code, or any rule or order adopted under Chapter 2306. Initially, the department adopted a rule designed to exercise this authority only with respect to violations of the Department's statute and rules concerning housing physical conditions and the eligibility of households. The Department has gained significant experience enforcing this subset of authority and believes it is now appropriate to exercise its enforcement authority to the fullest extent provided for by the Legislature. The new section sets out the procedures for initiation and assessment of administrative penalties by the Governing Board of the Department (the "Board") for any violation of Chapter 2306 of the Texas Government Code, or a rule or order adopted under Chapter 2306. The new section includes provisions for establishment of an Administrative Penalty Committee, for issuance of Notice of Noncompliance and Notice of Violation, for conducting an Informal Conference, and, where warranted, for issuance of a report to the Board recommending administrative penalties.

The Department accepted public comments between April 27, 2012, and May 29, 2012. Comments regarding the new section were accepted in writing and by fax. No comments were received concerning the new section.

The Board approved the final order adopting the new section on June 14, 2012.

STATUTORY AUTHORITY. The new section is adopted pursuant to the authority of Chapter 2306 of the Texas Government Code, which provides the Board and the Department with the authority to adopt rules governing the administration of the Department and its programs; specifically including §§2306.141, 2306.053, and 2306.041 - 2306.046.

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

Filed with the Office of the Secretary of State on June 15, 2012.

TRD-201203171
SUBCHAPTER A. RECORDS RETENTION SCHEDULING

13 TAC §6.10

The Texas State Library and Archives Commission adopts amendments to 13 TAC §6.10, regarding the Texas State Records Retention Schedule (RRS), pursuant to the Government Code §441.185(f). The amendment is adopted without changes to the proposed text as published in the May 4, 2012, issue of the Texas Register (37 TexReg 3326) and will not be republished.

The amendment revises records series 1.1.007 (Correspondence - Administrative) and 1.1.008 (Correspondence - General). The amendment extends the retention period for 1.1.007 to 4 years and extends the retention period for 1.1.008 to 2 years. The amendments can be found on page 2 in the graphic of Texas State Records Retention Schedule.

No comments were received on the proposed amendment.

The amended section is adopted under Government Code §441.185(f) which grants authority to the Texas State Library and Archives Commission to prescribe a minimum retention period for any state record unless a minimum retention period for the record is prescribed by another federal or state law, regulation, or rule of court.

The amended section affects Government Code §441.185(f).

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

Filed with the Office of the Secretary of State on June 14, 2012.

TRD-201203087
Edward Seidenberg
Deputy Director
Texas State Library and Archives Commission
 Effective date: July 4, 2012
Proposal publication date: May 4, 2012
For further information, please call: (512) 463-5459

CHAPTER 7. LOCAL RECORDS

SUBCHAPTER D. RECORDS RETENTION SCHEDULES

13 TAC §7.125

The Texas State Library and Archives Commission adopts amendments to 13 TAC §7.125(a)(1), regarding local government retention schedule for the general records common to all local governments (Schedule GR), pursuant to the Government Code §441.158(a). The amendment is adopted without changes to the proposed text as published in the May 4, 2012, issue of the Texas Register (37 TexReg 3326) and will not be republished.

The amendment revises records series GR1000-26 (Correspondence, Internal Memoranda, and Subject Files). The amendment extends the retention period for GR1000-26a to 4 years and extends the retention period for GR1000-26b to 2 years. The amendments can be found on page 11 of 62 in the graphic of Lo-
CHAPTER 111. RULES AND REGULATIONS OF THE BOARD

13 TAC §§111.13 - 111.33

The State Preservation Board (Board) adopts amendments to §§111.13 - 111.18, 111.20, 111.23, 111.25, 111.27, 111.32, 111.33

The Board adopts amendments that make necessary changes to the Local Schedules in subsection (a)(8) - (12) with the correct paragraphs. There are no changes being made to the content of the Local Schedules in subsection (a)(2), (6), (8), (9), (10), (11) or (12).

One comment was received regarding the amendment during the comment period. The comment addressed two main concerns.

Concern 1: The first concern was regarding the phrase "typical 4-year term for elected officials and members of governing bodies." The commenter stated that most cities in Texas (68%) have only two-year terms.

Agency response: While most cities may have two-year terms, many other local elected officials in Texas (including County Commissioners, County Clerks, County Judges, and board members of School Districts) serve four-year terms.

Concern 2: The second concern was regarding possible violations of the Texas Open Meetings Act. The commenter stated that there are other records besides correspondence (such as agendas and meeting notes) that may demonstrate violations of the Texas Open Meetings Act.

Agency response: Because the Texas Open Meetings Act requires public notice before a meeting it is unlikely that records like agendas and meeting notes will be created without the public being aware of their creation; correspondence about a meeting, meanwhile, can be created at any time with no notice to the public, so the commission feels a longer retention period is appropriate to give the citizens of Texas enough time to request and review records they may not have known existed at the time of the meeting.

The amended section adopts under Government Code §441.158 that grants authority to the Texas State Library and Archives Commission to provide records retention schedules to local governments and §441.160 that allows the commission to revise the schedules.

The amended section affects Government Code §441.158 and §441.160.

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

Filed with the Office of the Secretary of State on June 14, 2012.

TRD-201203088
Edward Seidenberg
Deputy Director
Texas State Library and Archives Commission
Effective date: July 4, 2012
Proposal publication date: May 4, 2012
For further information, please call: (512) 463-5459

PART 7. STATE PRESERVATION BOARD

ADOPTED RULES  June 29, 2012  37 TexReg 4891
to the board by the Legislature Senate Bill 1338 to allow the board to use gifts of property for the purposes specified by the grantor, unless the purpose conflicts with the goal of preserving the historic character of the buildings.

Amended §111.20(b) amends the provision to comply with the authority granted by the Legislature in Senate Bill 1338 to charge indirect costs to persons or entities using the Capitol or Capitol Extension for an exhibition. In addition, the amendment clarifies that these costs will be recovered in the form of a fee, as authorized by Texas Government Code §443.019(b). The language referring to amounts deducted from a deposit is removed as those costs will now be part of the fee. Amended §111.20(c)(3) clarifies procedures of the board by adding language stating that scheduled events on the Capitol Grounds should conclude by 9:00 p.m. Amended §111.20(d)(2) aligns the rule with the current practice of allowing events to be scheduled one week before the date requested, rather than three weeks. Amended §111.20(d)(8) clarifies the new procedures relating to inspection and clean-up. The organizer of the event will be responsible for any costs of additional clean up or damage repair.

Amended §111.23 clarifies procedures of the board as related to fund-raising. The amended rule includes educational programming and the Bob Bullock Texas State History Museum as categories for donations.

Amended §111.25 implements the authority granted by the Legislature in Senate Bill 1928, 82nd Legislature, Regular Session (2011), to establish an African American Texans memorial monument on the historic Capitol grounds. In addition, the amendment modifies the rule to allow the board to place a Tejano memorial monument on the historic grounds as authorized by Texas Government Code §443.01525.

Amended §111.27(a)(6) and (7) prohibit smoking in and bringing balloons into the Capitol and Capitol Extension. Amended §111.27(c) amends the provision to comply with the authority granted by the Legislature in Senate Bill 1338 to charge indirect costs to persons or entities using the Capitol or Capitol Extension for an exhibition. In addition, the amendment clarifies that these costs will be recovered in the form of a fee, as authorized by Texas Government Code §443.019(b). The language referring to amounts deducted from a deposit is removed as those costs will now be part of the fee. As the costs will now be in the form of a fee, the language allowing the board the option of charging it as a fee will be removed.

New §111.32 is adopted to establish standards of conduct governing the relationship between donors and the board's officers and employees, as required by Texas Government Code Chapter 2255.

New §111.33 is adopted to establish standards of conduct governing the relationship between an affiliated non-profit organization and the board and its officers and employees, as required by Texas Government Code Chapter 2255. The board is authorized to establish an affiliated non-profit support organization for the Bob Bullock Texas State History Museum under Texas Government Code §445.013. In addition, Senate Bill 1338 amended Texas Government Code Chapter 443, to allow the board to establish additional affiliated non-profit support organizations.

The amendments and new sections are justified by the changes to the Board's enabling statute, Texas Government Code Chapter 443, made by Senate Bill 1338. In addition, the Board has clarified procedures of the Board which should benefit the public in its visitation of the State Capitol and other properties under the jurisdiction of the Board.

No comments were received regarding the proposed amendments and new rules.

The amendments and new rules are adopted under Texas Government Code §443.007(b) which authorizes the board to adopt rules concerning the buildings, their contents, and their grounds. Texas Government Code Chapter 2255, requires state agencies to adopt rules governing the relationship between private organizations, the board, and its employees.

No other statutes, articles or codes are affected by the adopted amendments and new rules.

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

Filed with the Office of the Secretary of State on June 11, 2012.

TRD-201203030

John Sneed
Executive Director
State Preservation Board

Effective date: July 1, 2012
Proposal publication date: January 6, 2012
For further information, please call: (512) 463-6271

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §§3.9, 3.14, 3.46, 3.79, 3.81, 3.95 - 3.97, 3.99, 3.100

The Railroad Commission of Texas (Commission) adopts amendments to §§3.9, 3.14, 3.46, 3.79, 3.81, 3.95 - 3.97, 3.99, and 3.100, relating to Disposal Wells; Plugging; Fluid Injection into Productive Reservoirs; Definitions; Brine Mining Injection Wells; Underground Storage of Liquid or Liquefied Hydrocarbons in Salt Formations; Underground Storage of Gas in Productive or Depleted Reservoirs; Underground Storage of Gas in Salt Formations; Cathodic Protection Wells; and Seismic Holes and Core Holes, without changes to the versions published in the April 6, 2012, edition of the Texas Register (37 TexReg 2287). In a separate rulemaking, the Commission adopts similar amendments to two rules in Chapter 5 of this title, relating to Carbon Dioxide (CO2).

The Commission recently adopted similar amendments to §3.30 of this title, relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ), in a separate rulemaking. The Commission also recently adopted, with an effective date of May 1, 2012, amendments to §3.78 of this title, relating to Fees and Financial Security Requirements, to implement new Texas Natural Resources Code, §91.0115, relating to Casing; Letter of Determination, as added by House Bill (HB) 2694 (82nd Legislature, Regular Session, 2011), regarding fees for a request from an applicant for a permit to drill an oil or gas well for a letter of determination stating the total depth of surface casing required for the well. In addition, the Commission will propose

37 TexReg 4892 June 29, 2012 Texas Register
similar amendments to §3.13 of this title, relating to Casing, Cementing, Drilling, and Completion Requirements, in a future rule-making.

The Commission adopts these amendments to implement Article 2 of HB 2694, which transferred from the Texas Commission on Environmental Quality (TCEQ) to the Railroad Commission of Texas (Commission) duties relating to the protection of groundwater resources from oil and gas associated activities. Specifically, the law transfers from the TCEQ to the Commission, effective September 1, 2011, duties pertaining to the responsibility of preparing groundwater protection advisory/recommendation letters. After the transfer, the Commission will be responsible for providing surface casing and/or groundwater protection recommendations for oil and gas activities under the jurisdiction of the Commission.

The TCEQ's Surface Casing Program and staff transferred to the Commission effective September 1, 2011. The Surface Casing Program has been renamed the Groundwater Advisory Unit and is now located in the William B. Travis Building, 1701 North Congress, Austin, Texas.

The Commission adopts amendments to §3.9(2); §3.14(a)(1)(l), (d)(2), (e)(4), (f)(3), and (g)(4); §3.46(k)(1)(B); §3.81(d)(4)(l) and (g)(4)(B); §3.95(d)(2); §3.96(c)(4); §3.97(d)(2); §3.99(a)(3), (c), and (g); and §3.100(a)(4), (c), and (g)(1), to replace the phrases "TCEQ" and "Texas Commission on Environmental Quality (TCEQ) or its successor agencies" with the phrase "Groundwater Advisory Unit of the Oil and Gas Division."

The Commission also adopts new §3.79(27), relating to Definitions, to add a definition for "underground source of drinking water." The term is used for recommendations related to the Commission's federally-approved Underground Injection Control Program under the Safe Drinking Water Act.

The Commission adopts these amendments to reflect the transfer from the TCEQ to the Commission required under HB 2694 of the duties relating to groundwater protection letters. No other changes, including how the Commission makes determinations regarding groundwater protection, are adopted. For recommendations related to normal drilling operations, shot holes for seismic surveys, and cathodic protection wells, the Commission (as did the TCEQ) will provide 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 Commission. The geological interpretation may include groundwater protection based on potential hydrological connectivity to usable-quality water. For recommendations related to injection in a non-producing zone, the Commission (as did the TCEQ) will provide geologic interpretation of the base of the underground source of drinking water as defined in 16 TAC §3.30 (relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ)), which is the same definition in TCEQ's 30 TAC §331.2 (relating to Definitions).

The Commission received one comment from the Texas Oil and Gas Association (TxOGA). TxOGA offered some observations and suggestions on the proposed amendments. In §3.9(2), since another agency is no longer involved in the process, TxOGA suggests that this requirement is no longer necessary and the sharing of the information can be handled internally at the Commission. The Commission does not agree that §3.9(2) is no longer necessary. The language in §3.9(2) provides notice to an applicant for a permit under Rule 9 of the requirement to submit with the application a letter from the Groundwater Advisory Unit. The Commission made no change in response to this comment.

In §3.79(27), TxOGA suggests clarification is needed regarding how the Commission will reconcile the differences between the proposed definition of "underground source of drinking water" and the language in §3.30, the Memorandum of Understanding between the Commission and the Texas Commission on Environmental Quality. The Commission agrees that the wording of the definitions is not exactly the same; however, the practical meaning of the two definitions is the same. The definition in §3.30 includes as an Underground Source of Drinking Water (USDW) "an aquifer or its portions which supplies drinking water for human consumption" which would include "an aquifer or its portion which . . . supplies any public water system." The Commission made no change in response to this comment, but may revise the wording in the definition of USDW in §3.30 at a later date.

The Commission adopts the amendments to §§3.9, 3.14, 3.46, 3.79, 3.81, 3.95 - 3.97, 3.99, and 3.100 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; 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 §§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 adopted amendments.

Statutory authority: Texas Water Code, §26.131, Chapter 27, 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 June 12, 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.

ADOPTED RULES  June 29, 2012  37 TexReg 4893
16 TAC §3.15

The Railroad Commission of Texas (Commission) adopts amendments to §3.15, relating to Surface Equipment Removal Requirements and Inactive Wells, with changes from the version published in the April 6, 2012, issue of the Texas Register (37 TexReg 2291). House Bill (HB) 3134 (82nd Legislature, Regular Session, 2011) took effect June 17, 2011, and amended Texas Natural Resources Code, §89.022 and §89.023, concerning plugging extensions for inactive wells.

Currently, §3.15(g) authorizes the Commission or its delegate to administratively deny an application for a plugging extension for an inactive well if it determines that the application does not meet the requirements of §3.15. Consistent with the statutory changes to Texas Natural Resources Code, §89.022, the adopted amendments only authorize administrative denial when an applicant has failed to maintain its organization report, to pay a statutory fee, to pay fees associated with applications, or to provide a financial assurance. Where the Commission or its delegate determines that an applicant for a plugging extension has failed to comply with the substantive requirements for a plugging extension, the amendments implement the statutory mandate that the applicant be given notice of the deficiency and 90 days to cure any defects in its application. If, after the 90 day period, the Commission determines that the application remains deficient, the applicant will be given notice of this determination and will have 30 days to request a hearing and pay the hearing fee. If a hearing is not timely requested or the hearing fee is not timely submitted, the plugging extension and associated organization report are subject to denial by Commission Order without further notice or opportunity for hearing. Under the adopted amendments, where an organization report cannot be renewed solely because of an administrative determination that the applicant has not complied with the substantive requirements for a plugging extension, the applicant's organization report remains in effect until the Commission approves its extension application or enters a final order denying the application.

The Commission received one comment on the proposal from the Texas Oil and Gas Association (TxOGA). TxOGA offered "observations and suggestions" on three aspects of the proposed rule. With regard to the portion of proposed §3.15(g)(3) stating that a Commission delegate shall notify an operator of a determination that it has not met the inactive well requirements within 14 days, TxOGA states that it is unclear when the 14-day period begins. The Commission agrees, and to remove any potential ambiguity, adopts a change to add the phrase, "... after receipt of the applicant's administratively complete organization report renewal packet, including all statutorily required fees and financial assurance." TxOGA next comments that §3.15(g)(4) does not include a refund process in the case where a matter is resolved prior to hearing. This comment accurately states the intent of the rule. No

refunds will be given once a hearing has been requested and the hearing fee paid. An organization report renewal packet, including a listing of the operator's inactive wells, is typically mailed to the operator 60 to 90 days prior to that operator's renewal date. Under the rule, the operator will have an additional 90 days after the renewal date to resolve any deficiencies regarding inactive wells and, if still not resolved, 30 days after that before a hearing request must be filed and the hearing fee paid. Consequently, operators will generally have four to six months after initial notice of the wells the Commission considers to be inactive and non-compliant to resolve any inactive well issues without paying the hearing fee. The Commission, however, must incur the bulk of hearing-related expenses prior to the hearing request. All research and the compilation of data concerning the operator's inactive wells that the Commission has determined to be non-compliant must be done long prior to the hearing request deadline. Initially, the Commission must do this work to prepare the renewal packet. After receipt of the applicant's organization report and supporting documents, this information must be reviewed and, for operators determined to be non-compliant, the required notice of this determination must be prepared to commence the 90-day "cure" period. Subsequently, if the Commission staff determines that inactive well deficiencies remain, this process must be repeated to commence the 30-day period to request a hearing. There are approximately 1,800 operators currently identified as non-compliant with the inactive well requirements and thus potentially 1,800 hearings could be required. The hearings examiners who will actually conduct the inactive well hearings must be hired and trained prior to the hearing dates and must be available to conduct the hearings even if the operator actually resolves its inactive well deficiencies shortly prior to the hearing. Because the applicant will have an extended time to resolve the staff determination that its inactive wells are non-compliant prior to the deadline for requesting a hearing and paying the hearing fee and because the bulk of the Commission's costs are incurred prior to the hearing in dealing with the application and in having the hearing process in place, no refunds will be given if an operator withdraws its hearing request after paying the hearing fee.

Finally, TxOGA comments that the references to "well" are unclear and could be understood to refer to all of an operator's inactive wells or only those inactive wells that the Commission or its delegate has determined to be non-compliant. As suggested by this comment, to remove any potential ambiguity, the Commission adopts §3.15(g)(4) with a change to amend the reference to the wells required to be identified by API number from "each well" to "each inactive well for which the operator is seeking a hearing to contest the determination that the well remains out of compliance." The Commission also adopts wording in §3.15(g)(5) changing the phrase "a well that is the subject of the application" to "a well that is the subject of the hearing request."

The Commission adopts the amendments 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 89, Subchapter B-1, §89.022 and §89.023, as amended by HB 3134, which give the Commission authority over the maintenance of inactive wells and plugging extensions for inactive wells; and 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.

Texas Natural Resources Code, §§81.051, 81.052, 89.022, 89.023, and 91.101 are affected by the adopted amendments.

Statutory authority: Texas Natural Resources Code, Chapters 81, 89, and 91.

Cross-reference to statute: Texas Natural Resources Code, Chapters 81, 89, and 91.

Issued in Austin, Texas, on June 12, 2012.

§3.15. Surface Equipment Removal Requirements and Inactive Wells.

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

(1) Active operation--Regular and continuing activities related to the production of oil and gas for which the operator has all necessary permits. In the case of a well that has been inactive for 12 consecutive months or longer and that is not permitted as a disposal or injection well, the well remains inactive for purposes of this section, regardless of any minimal activity, until the well has reported production of at least 10 barrels of oil for oil wells or 100 mcf of gas for gas wells each month for at least three consecutive months.

(2) Cost calculation for plugging an inactive well--The cost, calculated by the Commission or its delegate, for each foot of well depth plugged based on average actual plugging costs for wells plugged by the Commission for the preceding state fiscal year for the Commission Oil and Gas Division district in which the inactive well is located.

(3) Delinquent inactive well--An inactive well for which, after notice and opportunity for a hearing, the Commission or its delegate has not extended the plugging deadline.

(4) Enhanced oil recovery (EOR) project--A project that does not include a water disposal project and is:

(A) a Commission-approved EOR project that uses any process for the displacement of oil or other hydrocarbons from a reservoir other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process;

(B) a certified project described by Texas Tax Code, §202.054; or

(C) any other project approved by the Commission or its delegate for EOR.

(5) Good faith claim--A factually supported claim based on a recognized legal theory to a continuing possessory right in a mineral estate, such as evidence of a currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate.

(6) Inactive well--An unplugged well that has been spudded or has been equipped with casing and that has had no reported production, disposal, injection, or other permitted activity for a period of greater than 12 months.

(7) Physical termination of electric service to the well's production site--Disconnection of the electric service to an inactive well site at a point on the electric service lines most distant from the production site toward the main supply line in a manner that will not interfere with electrical supply to adjacent operations, including cathodic protection units.

(8) Operator designation form--A certificate of compliance and transportation authority or an application to drill, recomplete, and reenter that has been approved by the Commission or its delegate.

(b) Plugging of inactive bay and offshore wells required.

(1) An operator of an existing inactive bay or offshore well as defined in §3.78 of this title (relating to Fees and Financial Security Requirements) must:

(A) restore the well to active status as defined by Commission rule;

(B) plug the well in compliance with a Commission rule or order; or

(C) obtain the approval of the Commission or its delegate of an extension of the deadline for plugging an inactive bay or offshore well.

(2) The Commission or its delegate may not approve an extension of the deadline for plugging an inactive bay or offshore well if the plugging of the well is otherwise required by Commission rules or orders.

(c) Extension of deadline for plugging an inactive bay or offshore well. The Commission or its delegate may administratively grant an extension of the deadline for plugging an inactive bay or offshore well as defined by Commission rules if:

(1) the operator has a current organization report;

(2) the operator has, and on request provides, evidence of a good faith claim to a continuing right to operate the well;

(3) the well and associated facilities are otherwise in compliance with all Commission rules and orders; and

(4) for a well more than 25 years old, the operator successfully conducts and the Commission or its delegate approves a fluid level or hydraulic pressure test establishing that the well does not pose a potential threat of harm to natural resources, including surface and subsurface water, oil, and gas.

(d) Plugging of inactive land wells required.

(1) An operator that assumes responsibility for the physical operation and control of an existing inactive land well must maintain the well and all associated facilities in compliance with all applicable Commission rules and orders and within six months after the date the Commission or its delegate approves an operator designation form must either:

(A) restore the well to active status as defined by Commission rule;

(B) plug the well in compliance with a Commission rule or order; or

(C) obtain approval of the Commission or its delegate of an extension of the deadline for plugging an inactive well.

(2) The Commission or its delegate may not approve an extension of the deadline for plugging an inactive land well if the plugging of the well is otherwise required by Commission rules or orders.

(3) Except for an operator designation form filed for the purpose of a name change, the Commission or its delegate may not approve an operator designation form for an inactive land well submitted within the six-month compliance period of paragraph (1) of this subsection until the operator satisfies the requirements of paragraph (1)(C) of this subsection.
(4) If an operator fails to restore the well to active status as defined by Commission rule, plug the well in compliance with a Commission rule or order, or obtain an extension of the deadline for plugging an inactive well within six months after acquiring an inactive well, the Commission or its delegate may, after notice and opportunity for hearing, revoke the operator's organization report.

(5) The Commission or its delegate may approve an organization report that is delinquent or has been revoked if the Commission or its delegate simultaneously approves extensions of the deadline for plugging the operator's inactive wells.

(e) Extension of deadline for plugging an inactive land well. The Commission or its delegate may administratively grant an extension of the deadline for plugging an inactive land well if:

(1) the Commission or its delegate approves the operator's Application for an Extension of Deadline for Plugging an Inactive Well (Commission Form W-3X);

(2) the operator has a current organization report;

(3) the operator has, and on request provides evidence of, a good faith claim to a continuing right to operate the well;

(4) the well and associated facilities are otherwise in compliance with all Commission rules and orders; and

(5) for a well more than 25 years old, the operator successfully conducts and the Commission or its delegate approves a fluid level or hydraulic pressure test establishing that the well does not pose a potential threat of harm to natural resources, including surface and subsurface water, oil, and gas.

(f) Application for an extension of deadline for plugging an inactive land well.

(1) This subsection does not apply to a bay well or an offshore well as those terms are defined in §3.78 of this title.

(2) An operator must include the following in an application for an extension of the deadline for plugging an inactive well:

(A) an affirmation made by an individual with personal knowledge of the physical condition of the inactive well pursuant to the provisions of Texas Natural Resources Code, §91.143, stating the following: that the operator has physically terminated electric service to the well's production site; and either:

(i) if the operator does not own the surface of the land where the well is located and the well has been inactive for at least five years but for less than 10 years as of the date of renewal of the operator's organization report, that the operator has emptied or purged of production fluids all piping, tanks, vessels, and equipment associated with and exclusive to the well; or

(ii) if the operator does not own the surface of the land where the well is located, and the well has been inactive for at least 10 years as of the date of renewal of the operator's organization report, that the operator has removed all surface equipment and related piping, tanks, tank batteries, pump jacks, headers, fences, and firewalls; has closed all open pits; and has removed all junk and trash, as defined by Commission rule, associated with and exclusive to the well; and

(B) documentation that the operator has satisfied at least one of the following requirements:

(i) for all inactive land wells that an operator has operated for more than 12 months, the operator has plugged or restored to active operation, as defined by Commission rule, 10% of the number of inactive land wells operated at the time of the last annual renewal of the operator's organization report;

(ii) if the operator is a publicly traded entity, for all inactive land wells, the operator has filed with the Commission a copy of the operator's federal documents filed to comply with Financial Accounting Standards Board Statement No. 143, Accounting for Asset Retirement Obligations, and an original executed Uniform Commercial Code Form P-1 Financing Statement, filed with the Secretary of State, that names the operator as the "debtor" and the Railroad Commission of Texas as the "secured creditor" and specifies the funds covered by the documents in the amount of the cost calculation for plugging all inactive wells;

(iii) the filing of a blanket bond on Commission Form P-5PB(2), Blanket Performance Bond, a letter of credit on Commission Form P-5LC, Irrevocable Documentary Blanket Letter of Credit, or a cash deposit, in the amount of either the lesser of the cost calculation for plugging all inactive wells or $2 million;

(iv) for each inactive land well identified in the application, the Commission has approved an abeyance of plugging report and the operator has paid the required filing fee;

(v) for each inactive land well identified in the application, the operator has filed a statement that the well is part of a Commission-approved EOR project;

(vi) for each inactive land well identified in the application that is not otherwise required by Commission rule or order to conduct a fluid level or hydraulic pressure test of the well, the operator has conducted a successful fluid level test or hydraulic pressure test of the well and the operator has paid the required filing fee;

(vii) for each inactive land well identified in the application, the operator has filed Commission Form W-3X and the Commission or its delegate has approved a supplemental bond, letter of credit, or cash deposit in an amount at least equal to the cost calculation for plugging an inactive land well for each well specified in the application; or

(viii) for each time an operator files an application for a plugging extension and for each inactive land well identified in the application, the operator has filed Commission Form W3-X and the Commission or its delegate has approved an escrow fund deposit in an amount at least equal to 10% of the total cost calculation for plugging an inactive land well.

(g) Commission action on application for plugging extension.

(1) The Commission or its delegate shall administratively grant all applications for plugging extensions that meet the requirements of Commission rules.

(2) The Commission or its delegate may administratively deny an application for a plugging extension for an inactive well if the Commission or its delegate determines that:

(A) the applicant does not have an active organization report at the time the plugging extension application is filed;

(B) the applicant has not submitted all required filing fees and financial assurance for the requested plugging extension and for renewal of its organization report; or

(C) the applicant has not submitted a signed organization report for the applied-for extension year that qualifies for approval regardless of whether the applicant has complied with the inactive well requirements of this section.

(3) Except as provided in paragraph (2) of this subsection, if the Commission or its delegate determines that an organization report should be denied renewal solely because it does not meet the inactive well requirements of this section, a Commission delegate shall, within a
reasonable time of not more than 14 days after receipt of the applicant’s administratively complete organization report renewal packet, including all statutorily required fees and financial assurance:

(A) notify the operator of the determination;

(B) provide the operator with a written statement of the reasons for the determination; and

(C) notify the operator that it has 90 days from the expiration of its most recently approved organization report to comply with the requirements of this section.

(4) If, after the expiration of the 90-day period specified in paragraph (3)(C) of this subsection, the Commission or its delegate determines that the operator remains out of compliance with the requirements of this section, the Commission delegate shall mail the operator a second written notice of this determination. The operator may request a hearing. The operator must file a written request for hearing and the hearing fee of $4,500 with the Office of General Counsel, Hearings Section, Docket Services, no later than 30 days from the date the second written notice was mailed to the operator. In the request for hearing, the operator must identify by its assigned American Petroleum Institute (API) number each inactive well for which the operator is seeking a hearing to contest the determination that the well remains out of compliance. If the operator fails to timely file a request for hearing and the required hearing fee, the Commission shall enter an order denying the appealed extension request and denying renewal of the operator’s organization report without further notice or opportunity for hearing.

(5) At the time an operator files a request for hearing under this subsection, the operator shall provide a list of affected persons to be given notice of the hearing. Affected persons shall include the owners of the surface estate of each tract on which a well that is the subject of the hearing request is located, the director of the Commission’s Enforcement Section, and the district director of each Commission district in which the wells are located. The applicant’s failure to diligently prosecute a hearing requested under this subsection may result in the application being involuntarily dismissed for want of prosecution on the motion of any affected person or on the Commission’s own motion.

(6) If an operator files a timely plugged extension application that is not properly administratively denied for the reasons specified in paragraph (2) of this subsection, then the operator’s previously approved organization report shall remain in effect until the Commission approves its plugged extension application or enters a final order denying the application.

(h) Revocation of extension. The Commission or its delegate may revoke an extension of the deadline for plugging an inactive well if the Commission or its delegate determines, after notice and an opportunity for a hearing, that the applicant is ineligible for the extension under the Commission’s rules or orders.

(i) Removal of surface equipment for land wells inactive more than 10 years. Requirements to remove surface equipment for land wells inactive more than 10 years do not excuse an operator from compliance with all other applicable Commission rules and orders including the requirements in Chapter 4 of this title (relating to Environmental Protection).

(1) An operator of an inactive land well must leave a clearly visible sign as required by §3.3 of this title (relating to Identification of Properties, Wells, and Tanks) at the wellhead of the well and must maintain wellhead control as required by §3.13 of this title (relating to Casing, Cementing, Drilling, and Completion Requirements).

(2) An operator may not store surface equipment removed from an inactive land well on an active lease.

(3) An operator may be eligible for a temporary extension of the deadline for plugging an inactive land well or a temporary exemption from the surface equipment removal requirements if the operator is unable to comply with the requirements of subsection (f)(2)(A) of this section because of safety concerns or required maintenance of the well site and the operator includes with the application a written affirmation of the facts regarding the safety concerns or maintenance.

(4) An operator may be eligible for an extension of the deadline for plugging a well without complying with the surface equipment removal requirements for inactive land wells if the well is located on a unit or lease or in a field associated with an EOR project and the operator includes a statement in the written affirmation that the well is part of such a project. The exemption provided by this subsection applies only to the equipment associated with current and future operations of the project.

(5) For land wells that have been inactive for more than 10 years as of September 1, 2010, an operator must file documentation with its annual organization report filing to demonstrate that the operator has restored these wells to active operation; plugged and removed the surface equipment from these wells; or removed the surface equipment and obtained a plugging extension for these wells under the following schedule:

(A) at least 20% of the wells by the first renewal of the operator’s organization report after September 1, 2011;

(B) at least 40% of the wells by the first renewal of the operator’s organization report after September 1, 2012;

(C) at least 60% of the wells by the first renewal of the operator’s organization report after September 1, 2013;

(D) at least 80% of the wells by the first renewal of the operator’s organization report after September 1, 2014; and

(E) any wells remaining by the first renewal of the operator’s organization report after September 1, 2015.

(6) Upon the transfer of a land well that has been inactive for more than 10 years as of September 1, 2010, to a new operator, the new operator must bring the well into compliance with the requirement to remove surface equipment not later than six months after the date the Commission or its delegate approves the Commission Form P-4 under which the new operator assumes responsibility for the well. The removal of surface equipment by a new operator after a transfer does not count toward the fulfillment of the requirements of paragraph (5) of this subsection for either operator.

(7) The operator of a land well that becomes inactive for more than 10 years after September 1, 2010, must bring the well into compliance with the requirement to remove surface equipment prior to the next renewal of the operator’s annual organization report. The removal of surface equipment from such a well does not count toward the fulfillment of the requirements of paragraph (5) of this subsection.

(j) Abeyance of plugging report.

(1) An operator that files an abeyance of plugging report must:

(A) pay an annual fee of $100 for each inactive land well covered by the report;

(B) use Commission Form W-3X on which the operator must specify the field and the covered wells within that field; and
(C) for each well, include a certification signed and sealed by a person licensed by the Texas Board of Professional Engineers or the Texas Board of Professional Geoscientists stating that the well has:

(i) a reasonable expectation of economic value in excess of the cost of plugging the well for the duration of the period covered by the report, based on the cost calculation for plugging an inactive well;

(ii) a reasonable expectation of being restored to a beneficial use that will prevent waste of oil or gas resources that otherwise would not be produced if the well were plugged; and

(iii) documentation demonstrating the basis for the affirmation of the well's future utility.

(2) Except as provided in paragraph (3) of this subsection, the Commission or its delegate may not transfer an abeyance of plugging report to a new operator of an existing inactive land well. The new operator of an existing inactive land well must file a new abeyance of plugging report or otherwise comply with the requirements of this subchapter not later than six months after the date the Commission or its delegate approves the new operator's request to be recognized as the operator of the well.

(3) The Commission or its delegate may transfer an abeyance of plugging report in the event of a change of name of an operator.

(k) Enhanced oil recovery (EOR) project.

(1) An inactive well is considered to be part of an EOR project if the well is located on a unit or lease or in a field associated with a Commission-approved EOR project.

(2) Except as provided in paragraph (3) of this subsection, the Commission and its delegate may not transfer a statement that an inactive well is part of an EOR project to a new operator of an existing inactive well. A new operator of an existing inactive well must file a new statement stating that the well is part of such an EOR project or otherwise comply with the provisions of this section not later than six months after the date the Commission or its delegate approves the new operator's request to be recognized as the operator of the well.

(3) The Commission or its delegate may transfer a statement that a well is part of an EOR project in the event of a change of name of an operator.

(1) Fluid level or hydraulic pressure test for inactive wells more than 25 years old.

(1) At least three days prior to the test, the operator must give the district office notice of the date and approximate time the operator intends to conduct a fluid level or hydraulic pressure test. The district office may require that a test be witnessed by a Commission employee. The district office may allow an operator to conduct a test even if notice of the test is provided to the district office fewer than three days prior to the test.

(2) No operator may conduct a test other than a fluid level or hydraulic pressure test without prior approval from the district director or the director's delegate.

(3) For each inactive well that is more than 25 years old and that has been inactive more than 10 years, the operator must perform either a fluid level test once every 12 months or a hydraulic pressure test once every five years and obtain the approval of the Commission or its delegate of the results of said tests.

(4) Notwithstanding the provisions of paragraph (1) of this subsection, an operator may conduct a hydraulic pressure test without prior approval from the district director or the director's delegate, provided that the operator gives the district office written notice of the date and approximate time for the test at least three days prior to the time the test will be conducted; the production casing is tested to a depth of at least 250 feet below the base of usable quality water strata or 100 feet below the top of cement behind the production casing, whichever is deeper; and the minimum test pressure is greater than or equal to 250 psig for a period of at least 30 minutes.

(5) Using Commission Form H-15, each operator must file in the Commission's Austin office the results of a fluid level test within 30 days of the date the test was performed. The results are valid for a period of one year from the date of the test. Upon request by the Commission or its delegate, the operator must file the actual test data.

(6) Using Commission Form H-5 or Form H-15, each operator must file in the district office the results of a hydraulic pressure test, including the original pressure recording chart or its electronic equivalent, within 30 days of the date the test was performed. The results are valid for a period of five years from the date of the test, unless the Commission or its delegate requires the operator to perform testing more frequently to ensure that the well does not pose a threat of harm to natural resources.

(7) An operator of an inactive well that is more than 25 years old may not return that inactive well to active operation unless the operator performs either a fluid level test of the well within 12 months prior to the return to activity or a hydraulic pressure test of the well within five years prior to the return to activity.

(m) Fluid level or hydraulic pressure test for inactive land well less than 25 years old.

(1) At least three days prior to the test, each operator must give the district office notice of the date and approximate time the operator intends to conduct a fluid level or hydraulic pressure test. The district office may require that a test be witnessed by a Commission employee. The district office may allow an operator to conduct a test even if notice of the test is provided to the district office fewer than three days prior to the test.

(2) No operator may conduct a test other than a fluid level or hydraulic pressure test without prior approval from the district director or the director's delegate.

(3) Notwithstanding the provisions of paragraph (1) of this subsection, an operator may conduct a hydraulic pressure test without prior approval from the district director or the director's delegate, provided that the operator gives the district office written notice of the date and approximate time for the test at least three days prior to the time the test will be conducted; the production casing is tested to a depth of at least 250 feet below the base of usable quality water strata or 100 feet below the top of cement behind the production casing, whichever is deeper; and the minimum test pressure is greater than or equal to 250 psig for a period of at least 30 minutes.

(4) An operator that files documentation of a fluid level test or a hydraulic pressure test for an inactive land well less than 25 years old in order to obtain a plugging extension must pay an annual fee of $50 for each well covered by the documentation.

(5) Using Commission Form H-15, each operator must file in the Commission's Austin office the results of a fluid level test within 30 days of the date the test was performed. The results are valid for a period of one year from the date of the test. Upon request by the Commission or its delegate, the operator must file the actual test data.
(6) Using Commission Form H-5 or Form H-15, each operator must file in the district office the results of a hydraulic pressure test, including the original pressure recording chart or its electronic equivalent, within 30 days of the date the test was performed. The results are valid for a period of five years from the date of the test, unless the Commission or its delegate requires the operator to perform testing more frequently to ensure that the well does not pose a threat of harm to natural resources.

(7) The Commission or its delegate may transfer documentation of the results of a fluid level or hydraulic pressure test to a new operator of an existing inactive land well that is less than 25 years old.

(n) Supplemental financial assurance.

(1) A supplemental bond, letter of credit, or cash deposit filed as part of an application for an extension for an inactive land well is in addition to any other financial assurance otherwise required of the operator or for the well.

(2) The Commission or its delegate may not transfer a supplemental bond, letter of credit, or cash deposit to a new operator of an existing inactive land well. A new operator of an existing inactive land well must file a new supplemental bond, letter of credit, or cash deposit or otherwise comply with the provisions of this section not later than six months after the date the Commission or its delegate approves an operator designation form.

(o) Escrow funds.

(1) An operator must deposit escrow funds with the Commission each time the operator files an application for an extension of the deadline for plugging an inactive well.

(2) The Commission or its delegate may release escrow funds deposited with the Commission only as prescribed by §3.78 of this title.

(p) Plugging more than 10% of inactive well inventory. If an operator plugs more than 10% of the number of inactive land wells during a 12-month organization report cycle, the Commission will count the number of plugged wells above 10% toward fulfillment of the 10% blanket option under subsection (f)(2)(B)(i) of this section during the next organization report cycle.

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

Filed with the Office of the Secretary of State on June 12, 2012.

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Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas
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Proposal publication date: April 6, 2012
For further information, please call: (512) 475-1295

CHAPTER 5. CARBON DIOXIDE (CO2)
SUBCHAPTER B. GEOLOGIC STORAGE
AND ASSOCIATED INJECTION OF
ANTHROPOGENIC CARBON DIOXIDE (CO2)
16 TAC §5.203, §5.206

The Railroad Commission of Texas (Commission) adopts amendments to §§5.203 and §5.206, relating to Application Requirements; and Permit Standards, without changes to the versions published in the April 6, 2012, issue of the Texas Register (37 TexReg 2293).

The Commission recently adopted similar amendments to §3.30 of this title, relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ), in a separate rulemaking. The Commission also recently adopted, with an effective date of May 1, 2012, amendments to §3.78 of this title, relating to Fees and Financial Security Requirements, to implement new Texas Natural Resources Code, §91.0115, relating to Casing; Letter of Determination, as added by House Bill (HB) 2694 (82nd Legislature, Regular Session, 2011), regarding fees for a request from an applicant for a permit to drill an oil or gas well for a letter of determination stating the total depth of surface casing required for the well. In addition, the Commission will propose similar amendments to §3.13 of this title, relating to Casing, Cementing, Drilling, and Completion Requirements, in a future rulemaking.

The Commission adopts these amendments to implement Article 2 of HB 2694, which transferred from the Texas Commission on Environmental Quality (TCEQ) to the Commission duties relating to the protection of groundwater resources from oil and gas associated activities. Specifically, the law transfers from the TCEQ to the Commission, effective September 1, 2011, duties pertaining to the responsibility of preparing groundwater protection advisory/recommendation letters. After the transfer, the Commission will be responsible for providing surface casing and/or groundwater protection recommendations for oil and gas activities under the jurisdiction of the Commission.

In addition, Article 2 of HB 2694 amended Texas Water Code, §27.048, and transferred from the TCEQ to the Commission 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.

The TCEQ's Surface Casing Program and staff transferred to the Commission effective September 1, 2011. The Surface Casing Program has been renamed the Groundwater Advisory Unit and is now located in the William B. Travis Building, 1701 North Congress, Austin, Texas.

The Commission amends §§5.203(o) and §5.206(a)(7) to replace the phrases "Texas Commission on Environmental Quality" and "Executive Director of the Texas Commission on Environmental Quality" with the phrase "Groundwater Advisory Unit of the Oil and Gas Division."

The Commission adopts these amendments to reflect the transfer from the TCEQ to the Commission required under HB 2694 of the duties relating to groundwater protection letters. No other changes, including how the Commission makes determinations regarding groundwater protection, are proposed. For recommendations related to normal drilling operations, shot holes for seismic surveys, and cathodic protection wells, the Commission (as did the TCEQ) will provide 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 Commission. The geological interpretation may include groundwater protection based on potential hydrological connectivity to usable-quality water. For recommendations related to injection in a non-producing zone, the Commission (as did the TCEQ) will provide geologic interpretation of the base of the underground source of drinking water as defined in 16 TAC §3.30 (relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ)), which is the same definition in TCEQ's 30 TAC §331.2 (relating to Definitions).

The Commission received no comments on the proposal.

The Commission adopts amendments to §§5.203 and §5.206 under Texas Water Code, Chapter 27, which authorizes the Commission to adopt and enforce rules relating to injection wells; 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; and 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.

Texas Water Code, Chapter 27; and Texas Natural Resources Code, §81.052 and §91.101 are affected by the adopted amendments.

Statutory authority: Texas Water Code, Chapter 27; and Texas Natural Resources Code, §81.052 and §91.101.

Cross-reference to statute: Texas Water Code, Chapter 27; and Texas Natural Resources Code, §81.052 and §91.101.

Issued in Austin, Texas, on June 12, 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.

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Mary Ross McDonald
Acting Executive Director
Railroad Commission of Texas

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For further information, please call: (512) 475-1295

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

SUBCHAPTER C. BINGO GAMES AND EQUIPMENT

16 TAC §402.302

The Texas Lottery Commission (Commission) adopts the repeal of 16 TAC §402.302 (Card-Minding Systems) without changes to the proposed text as published in the February 17, 2012, issue of the Texas Register (37 TexReg 834). The purpose of the repeal is to allow for new rules replacing this rule to be broken out into separate rules for each respective entity for ease and clarification of requirements.

A public comment hearing was held on Wednesday, February 29, 2012 at 10:00 a.m. One individual representing Fort Worth Bookkeeping (16 Bingo Halls) was present at the hearing and commented against the new rule as proposed. Another individual representing Texas VFW, River City Bingo and over 350 charitable organizations was present at the hearing and commented against the new rule as proposed. The Commission also received written comments on the new rule from a representative of Planet Bingo during the public comment period.

Filed with the Office of the Secretary of State on June 11, 2012.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission

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For further information, please call: (512) 344-5275

16 TAC §402.321

The Texas Lottery Commission (Commission) adopts new 16 TAC §402.321 (Card-Minding Systems--Definitions) with changes to the proposed text as published in the February 17, 2012, issue of the Texas Register (37 TexReg 835). Specifically, in the adopted version of the rule, the agency has removed language referencing "void rules". The agency has also made some changes due to punctuation, grammar, and typographical errors. The purpose of the new rule is to provide definitions to terms used relative to bingo card-minding systems. Specifically, the new rule sets forth definitions for the following terms: account number, card-minding system, card-minding device, site system, card number range, checksum, connected, device ID number, device played, end of occasion log, independent testing facility, model number, occasion report, occasion summary report, package number, proprietary software, secondary component, software modifications, transaction log, and version number.

A public comment hearing was held on Wednesday, February 29, 2012 at 10:00 a.m. One individual representing Fort Worth Bookkeeping (16 Bingo Halls) was present at the hearing and commented against the new rule as proposed. Another individual representing Texas VFW, River City Bingo and over 350 charitable organizations was present at the hearing and commented against the new rule as proposed. The Commission also received written comments on the new rule from a representative of Planet Bingo during the public comment period.
Comment: With regard to definition (8)(R), as a supplier of card face verification equipment and software, we do not see the value in listing non-winning card numbers. A typical example where a non-winning card number would be verified through the system would be in an instance where the caller heard the wrong card number being called back from the floor-worker, or entered a number erroneously during verification. In either instance, or any instance of a non-winning card number being verified, the verifier will show that card as a non-winner, which is confirmed on the bingo floor at that moment. Some manufacturers may have to rewrite card-minding system programs to accommodate this requirement.

Agency Response: The agency disagrees with the commenter. This information is only being stored in the site system database and is potentially valuable information when investigating a complaint.

Comment: With regard to definition (15), "Secondary component", are secondary components, as defined, that are connected to but do not affect the conduct of the bingo game considered "testable" for certification, and if so, against what compliance standard?

Agency Response: No. Secondary components that are connected to but do not affect the conduct of the bingo game are not considered "testable" for certification.

Comment: With regard to definition (7), the proposed language speaks about the device played after applying "void rules". Clarify where the "void rules" may be found.

Agency Response: The agency concurs with the commenter and has removed the language referencing "void rules".

Comment: Under definition (2)(B), the second sentence states site systems must include printers. And my question is, will printers be tested and subject to a standard? If it's a Dell printer or a Hewlett-Packard or a Brother, I don't think the Commission ought to be testing that.

Agency Response: No. Printers will not be tested.

Comment: Under definition (8), "End of occasion log--Information stored in the site system database," "or in other digital storage devices" should be added. All this data has to be stored for four years, 48 months, and it may be a huge amount of data that you don't necessarily want to store on the site system. Storage on a thumb drive or some external digital storage device may be appropriate. It may not be cost efficient on the site system itself. There may be a download periodically for secure storage.

Agency Response: The agency disagrees with the commenter. The manufacturer requirements for the site system contained in §402.322 require the database to be capable of storing the required information for a period of 48 months. Additionally, a thumb drive device would not be capable of storing the required information.

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

1. Account Number--The unique identification number, if any, assigned by a card-minding system's point of sale to a transaction during a purchase and used by a customer to log on to a card-minding device in order to play bingo.

2. Card-Minding System--An electronic or computerized device and related hardware and software, that is interfaced with, or connected to, equipment used to conduct a game of bingo. A card-minding system consists of the following two parts:

   A. Card-Minding Device--A device used by a player to monitor bingo cards played at a licensed authorized organization's bingo occasion and which:
      (i) provides a means for the player to input or monitor called bingo numbers;
      (ii) compares the numbers entered or received against the numbers on the bingo cards stored in the memory of the device or loaded or otherwise enabled for play on the device; and
      (iii) identifies any winning bingo pattern(s) and prize levels.

   B. Site System--Computer hardware, software, and peripheral equipment, that is located at the bingo premises, is controlled by the licensed authorized organization conducting bingo, and interfaces with, connects with, controls, or defines the operational parameters of card-minding devices. Site Systems must include, but are not limited to, the following components: point of sale station, a caller station verifier, printers, remote access capability, proprietary executable software, report generation software and an accounting system and database.

3. Card number range--The range of unique numbers that are on the card faces that are actually sold to a given player for use in a single card-minding device. (Example: Device #1 is given card number range 2056-2080, and Device #2 is given card number range 2081-2105.)

4. Checksum--A value of fixed-size computed from a block of digital data for the purpose of detecting changes or modifications. Also referred to as a digital signature or hash sum.

5. Connected--Communication between the card-minding device and the site system by wired or wireless means during an active bingo occasion.

6. Device ID number--The unique identification number assigned by a manufacturer to a specific card-minding device.

7. Device played--A card-minding device utilized within a bingo occasion which had cards enabled or loaded and played.

8. End of occasion log--Information stored in the site system database at the end of each bingo occasion containing pertinent sales, voids, game, and system accounting information to include the following:

   A. licensed authorized organization's name;
   B. licensed authorized organization's license number;
   C. bingo occasion site (location);
   D. sequential listings of transactions or receipt numbers, including voided transactions;
   E. date and time of the bingo occasion and occasion number, if applicable;

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(F) total quantity of card-minding devices loaded;
(G) the device ID number of each card-minding device
loaded;
(H) total dollar value of sales of card-minding devices;
(I) total quantity of voided transactions to include the
dollar amount;
(J) total quantity of reloaded bingo cards;
(K) card numbers or card number range of card faces
used with each card-minding device;
(L) total dollar value of disposable cards sold;
(M) total dollar value of pull-tab bingo sold;
(N) total dollar value of regular bingo prizes awarded;
(O) total dollar value of pull-tab bingo prizes awarded;
(P) total dollar value of prize fees collected;
(Q) listing of the balls called, in the order called, for
each game; and
(R) listing of all card face numbers verified for each
game, both the non-winning and the winning card face numbers.

(9) Independent testing facility--A laboratory approved by
the Commission that is demonstrably competent and qualified to test
card-minding systems scientifically and evaluate them for compliance
with statutes and regulations. An independent testing laboratory shall
maintain the current applicable standards of the International Organi-
ization of Standardization as an accredited laboratory in the field of in-
f ormation technology testing. An independent testing laboratory shall
not be owned or controlled by a licensed organization, the state,
or any manufacturer, distributor or operator of card-minding sys-
tems.

(10) Model number--A number designated by the manu-
f acturer that indicates the unique structural design of a card-minding
device or site system.

(11) Occasion Report--A report generated by the site sys-
tem at the end of each bingo occasion containing pertinent sales, voids,
game and system accounting to include the following information:
(A) licensed authorized organization's name;
(B) licensed authorized organization's license number;
(C) bingo occasion site (location);
(D) total dollar value of sales of card-minding devices;
(E) total dollar value of voided transactions;
(F) total dollar value of sales of disposable cards;
(G) total dollar value of sales of pull-tab bingo;
(H) total dollar value of regular bingo prizes awarded;
(I) total dollar value of pull-tab bingo prizes awarded;
and
(J) total dollar value of prize fees collected.

(12) Occasion Summary Report--A report generated by the
site system for any specified period which contains the following infor-
mation:
(A) licensed authorized organization's name;
(B) licensed authorized organization's taxpayer num-
ber;
(C) bingo occasion site (location);
(D) total number of bingo occasions;
(E) total dollar value of sales of card-minding devices;
(F) total dollar value of voided transactions;
(G) total dollar value of sales of disposable cards;
(H) total dollar value of sales of pull-tab bingo;
(I) total dollar value of regular bingo prizes awarded;
(J) total dollar value of pull-tab bingo prizes awarded;

and
(K) total dollar value of prize fees collected.

(13) Package number--A number identifying the complete
package of bingo cards purchased for a card-minding device.

(14) Proprietary software--Custom computer software de-
veloped by a licensed manufacturer that is the primary component of
a card-minding system and is required for a card-minding device to be
used in a game of bingo.

(15) Secondary component--Additional software or hard-
ware components provided by the manufacturer, that are part of, or are
connected to, a card-minding system and that do not affect the con-
duct of the bingo game. Secondary components may include com-
puter screen backgrounds, battery charge-up software routines, print-
ers, printer software drivers, and charging racks.

(16) Software modifications--Alterations to proprietary
software.

(17) Transaction log--A site system report containing a
record of transaction information in detail.

(18) Version number--A unique number designated by the
manufacturer to signify a specific version of software used on or by the
card-minding system.

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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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5275

16 TAC §402.322

The Texas Lottery Commission (Commission) adopts new 16
TAC §402.322 (Card-Minding Systems--Site System Standards)
with changes to the proposed text as published in the February
17, 2012, issue of the Texas Register (37 TexReg 837). Specifi-
cally, in the adopted version of the rule, at subsections (d), (e),
(f), (i), (m), and (o), the agency has added the term "electronic"
before the words "bingo card" to differentiate between electronic
card facsimile and disposable bingo cards. Additionally, a new
subsection (h) has been added to the adopted version of the rule and states, "For voided transactions, the site system shall ensure all electronic bingo cards are erased or deactivated." Also a new subsection (u) has been added to the rule and states, "All card-minding system approvals issued by the Commission prior to the effective date of this section remain valid. Any subsequent changes or modifications to an approved system require compliance with this section."

The purpose of the new rule is to provide clear and concise requirements and guidelines for bingo card-minding site systems. Specifically, the new rule addresses: (1) at subsection (a) site system design; (2) at subsection (b) site system internal accounting system; (3) at subsection (c) site system verification; (4) at subsection (d) site system storage; (5) at subsection (e) site systems reloading of electronic bingo cards; (6) at subsection (f) site system duplication of cards; (7) at subsection (g) a functioning card-minding device or a programmable memory device relating to the sale, void, or reload transactions; (8) at subsection (h) the following new language has been added, "For voided transactions, the site system shall ensure all electronic bingo cards are erased or deactivated."; (9) at subsection (i) that the site system must not allow transactional information to be changed within the accounting system or database; (10) at subsections (j) and (k) device ID numbers; (11) at subsection (l) site system database backup and recovery system; (12) at subsection (m) prohibition of player or operator selection of specific cards to be sold or played; (13) at subsection (n) site system recording of sequential transaction or audit tracking numbers for every transaction; (14) at subsection (o) site system receipt requirements; (15) at subsections (p) and (q) site system storing and printing; (16) at subsection (r) that the site system must not allow a card-minding device to enable and play more than 66 card faces for any one ball call for any regular bingo game; (17) at subsection (s) site system record maintenance; (18) at subsection (t) that the site system must not erase or overwrite data until information is transferred to a secondary storage medium.; and (19) at subsection (u) the following new language has been added, "All card-minding system approvals issued by the Commission prior to the effective date of this section remain valid. Any subsequent changes or modifications to an approved system require compliance with this section."

A public comment hearing was held on Wednesday, February 29, 2012 at 10:00 a.m. An individual representing Texas VFW, River City Bingo and over 350 charitable organizations was present at the hearing and commented against the new rule as proposed. The Commission did not receive any written comments on the new rule during the public comment period.

Comment: There is no mention of the use of player rewards cards that are being used today. The rules should not prohibit the implementation of establishment of player-customer rewards programs. We want to make sure these rules don't prohibit that by silence. They're in existence and operating today with good results. They should track the deposit by the customer of their funds into the customer account.

Agency Response: The rules would not prohibit the use of any player tracking or player rewards programs. However, a portion of your comment is directed to players having a deposit account. You state, "They should track the deposit by the customer of their funds into the customer account." This transaction activity is quite different from a player tracking or rewards program. The use of a player account to track funds on deposit would not be authorized under these rules.

Comment: It is not clear whether subsection (d) pertains only to tracking electronic cards or also paper cards.

Agency Response: The agency agrees and has added the term "electronic" before the words bingo card to differentiate between electronic card facsimile and disposable bingo cards.

Comment: Under subsection (n), again, the system must be capable of printing a receipt and recording for each sale. Many halls do not record data for paper cards in a site system. The daily cash report or the occasion report, as it's called, will track that. And the same is true under subsection (p): "The site system must be capable of storing and printing an Occasion Report and Occasion Summary Report on demand." Again, there are some halls that don't do this. This will add to their cost.

Agency Response: The agency disagrees with the commenter. The particular rule sets out the standards for which a card-minding system must meet for approval for use in Texas. A card-minding site system must have these capabilities in order to be considered for approval for use in Texas.

The new rule 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.


(a) The site system must be designed so that the Commission may remotely verify the operation, compliance and internal accounting systems of the site system at any time. The manufacturer shall provide to the Commission all current protocols, usernames, passwords, and any other required information needed to access the system. Any and all reports maintained or available for generation by the card-minding system shall be capable of being downloaded or otherwise accessed via the remote connection.

(b) The site system's internal accounting system must be capable of recording the licensed organization's sale of card-minding devices, disposable bingo cards, pull-tab bingo tickets, regular bingo prizes awarded, pull-tab bingo prizes awarded and prize fee collected.

(c) The site system must be able to verify winning cards and print the cards for posting. For verification purposes, the site system must be capable of storing and printing an ordered list of all balls called for each regular bingo and pull-tab bingo event game.

(d) The site system must be capable of storing:
(1) all transactions affecting a card-minding device;
(2) the device ID number for each transaction affecting the card-minding device; and
(3) the date, time, quantity of electronic bingo cards affected, price per card or package, package number, and transaction number for each of the following transactions:
(A) loading of cards; and
(B) voiding of cards.

(e) The site system may allow the same electronic bingo cards originally sold and loaded on a card-minding device (device #3, for example) to be reloaded on the same device, provided the transaction is recorded as a reload.
(f) The site system shall not allow the exact duplication of cards on two different card-minding devices. However, the site system may allow electronic bingo cards originally sold on one card-minding device (device #4, for example) to be reloaded on a different card-minding device (such as device #10), provided that the original device (#4) was removed from play and the site system recorded the transaction as a reload.

(g) The site system must not engage in any type of sale, void, or reload transaction for a card-minding device unless a functioning card-minding device or a programmable memory device that inserts into a card-minding device is connected with the site system.

(h) For voided transactions, the site system shall ensure all electronic bingo cards are erased or deactivated.

(i) Upon completion of each transaction, the site system must not allow any transactional information including date, time, quantity of electronic bingo cards, price per card or package, package number, or other source information to be changed within the accounting system or database.

(j) The site system must identify duplicate device ID numbers.

(k) The site system must recognize the device ID number and store that number on the transaction log for each and every transaction that directly affects that card-minding device.

(l) The site system must have a database backup and recovery system to prevent loss of transactional information in the event of power failures or any disruptive event.

(m) The site system must not allow a player or operator to select specific cards from a perm of electronic bingo cards to be sold or played.

(n) The site system must record a sequential transaction number or audit tracking number for every transaction. The site system must not allow this number to be changed or reset manually.

(o) The site system must be capable of printing a receipt and recording for each sale, void or reload of an electronic or paper card face product that includes, at a minimum, the following information:

1. licensed authorized organization's name;
2. licensed authorized organization's taxpayer number;
3. bingo occasion location name;
4. date and time of the transaction, in DD/MM/YYYY HH:MM:SS; format;
5. sequential transaction or audit tracking number;
6. the dollar value of the transaction and quantity of associated products;
7. a notation to distinguish from which point of sale terminal the receipt was produced when more than one sales terminal is used;
8. the total dollar value of the transaction; and
9. transactions including a card-minding device must include the following information:
   A. device ID number (cannot be manually entered) or account number; and
   B. range of electronic bingo cards sold.

(p) The site system must be capable of storing and printing:

1. a transaction log; and
2. end of occasion log for each bingo occasion.

(q) The site system must be capable of storing and printing an Occasion Report and Occasion Summary Report on demand.

(r) The site system must not allow a card-minding device to enable and play more than 66 card faces for any one regular bingo game.

(s) The site system must be capable of maintaining all required information for the end of occasion log and the occasion summary report for a period of 48 months.

(t) The site system must not erase or overwrite any of the required bingo occasion information until both detail and summary information is transferred to a secondary storage medium.

(u) All card-minding system approvals issued by the Commission prior to the effective date of this section remain valid. Any subsequent changes or modifications to an approved system require compliance with 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.

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16 TAC §402.323

The Texas Lottery Commission (Commission) adopts new 16 TAC §402.323 (Card-Minding Systems--Device Standards) with changes to the proposed text as published in the February 17, 2012, issue of the Texas Register (37 TexReg 838). Specifically, a new subsection (j) has been added to the rule and states, "All card-minding system approvals issued by the Commission prior to the effective date of this section remain valid. Any subsequent changes or modifications to an approved system require compliance with this section."

The purpose of the new rule is to provide clear and concise requirements and guidelines for bingo card-minding devices. Specifically, the new rule: (1) at subsections (a) - (c) sets forth card-minding devices' security issues related to transactions with the site system; (2) at subsection (d) addresses card-minding device design with regard to daubing features; (3) at subsection (e) addresses electronic daubing of numbers; (4) at subsection (f) states that the card-minding device must allow the player to cancel or correct any numbers entered in error, if the device requires the player to manually enter ball call numbers; (5) at subsection (g) states that the devices must not allow a player to modify cards that are loaded and enabled for play; (6) at subsection (h) requires the devices to recognize and display all winning bingo patterns achieved; (7) at subsection (i) sets forth specific programming requirements of card-minding devices.

A public comment hearing was held on Wednesday, February 29, 2012 at 10:00 a.m. An individual representing Texas VFW,
River City Bingo and over 350 charitable organizations was present at the hearing and commented against the new rule as proposed. The Commission did not receive any written comments on the new rule during the public comment period.

Comment: There is no mention of the use of player rewards cards that are being used today. The rules should not prohibit the implementation of establishment of player/customer rewards programs. We want to make sure these rules don't prohibit that by silence. They're in existence and operating today with good results.

Agency Response: The rules would not prohibit the use of any player tracking or player rewards programs.

The new rule 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.


(a) The card-minding device must have a unique, permanent identification number, or have a unique identification number secured by password or code and accessible only by use of such password or code.

(b) The identification number must be encoded into the software of the card-minding device.

(c) The card-minding device must automatically transmit its identification number to the site system or be known by the site system, to be recorded on the transaction log, each time the device is involved in a transaction with the site system.

(d) The card-minding device must be designed in such a manner to allow for one or more of the following daubing features:

(1) Manual ball call: This requires the player to identify uniquely the ball call that has been made. This could be through a number of methods, for example: the selection of the number on a grid containing all 75 numbers; the selection of the letter from BINGO, then the number from a list of 15 numbers; or the entry through a keypad of the digits comprising the number. However, it requires the player to enter the numbers as they are called and therefore allows the player to enter a number in error. This method of daubing must enable the player to correct numbers entered in error.

(2) Ball call confirm: This method requires the broadcast of the ball call information to the card-minding device. When the ball call is received by the card-minding device, the player must perform an action to confirm or enter the ball call. This is typically through the pressing of a key or the touching of the screen. This daub style requires the player to perform an action for each and every ball call that is made. If the player waits, and a number of ball calls are made without the player performing any action, the player must then touch the screen (or press enter) once for each ball called. The ball calls must be processed in the order they were drawn.

(3) Semi-auto daub: This method requires the broadcast of the ball call information to the card-minding device. This method operates in the same manner as ball call confirm, except that, if the player allows multiple balls to be called without interacting with the card-minding device, a single action will daub all outstanding ball calls. The ball call that was most recently made by the caller is processed last and the bingo cards are scored with this number being the "last number" for any last number rule games.

(4) Auto Daub: This method requires the broadcast of the ball call information to the card-minding device. As each ball call is received by the card-minding device, the card-minding device behaves as though the player performed the ball call confirm action. That is to say, the card-minding device will act automatically as each ball call is announced.

(c) The card-minding device must recognize bingo numbers called and after having the numbers entered through one of the methods in subsection (d) of this section, must electronically daub the number on all activated bingo cards enabled or loaded on the card-minding device containing those numbers in the winning pattern.

(f) If a card-minding device requires the player to manually enter ball call numbers, the card-minding device must allow the player to cancel or correct any numbers entered in error.

(g) The card-minding device must not allow a player to modify cards that are loaded and enabled for play.

(h) The card-minding device must recognize and display all winning bingo patterns achieved.

(i) The card-minding device must be programmed to only allow bingo cards purchased and loaded and enabled for play during a bingo occasion, to be in play during that occasion. Therefore, the card-minding system shall provide a means to erase, disable, or render unplayable the bingo cards loaded and enabled on each card-minding device played in a bingo occasion, prior to playing the same device in the next bingo occasion. Suggested means are at least one of the following:

(1) on deactivation of the current bingo occasion;
(2) by inserting the device into a charger;
(3) by a timer within the device;
(4) on activation of the next bingo occasion;
(5) by automatically erasing all bingo cards and/or bingo card face numbers stored in the device after the last bingo game of the occasion; or
(6) any other suitable means to ensure game integrity.

(j) All card-minding system approvals issued by the Commission prior to the effective date of this section remain valid. Any subsequent changes or modifications to an approved system require compliance with 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.

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16 TAC §402.324
The Texas Lottery Commission (Commission) adopts new 16 TAC §402.324 (Card-Minding Systems--Approval of Card-Minding Systems) with changes as published in the February 17, 2012, issue of the Texas Register (37 TexReg 839). Specifically, a new subsection (i) has been added to the rule and states, "All card-minding system approvals issued by the Commission prior to the effective date of this section remain valid. Any subsequent changes or modifications to an approved system require compliance with this section."

The purpose of the new rule is to provide the approval process to the manufacturers of bingo card-minding devices. Specifically, the new rule: (1) at subsection (a) sets forth the testing requirements and standards related to the sale, lease, or otherwise furnishing of a card-minding system; (2) at subsection (b) sets forth the elements of utilizing an independent testing lab; (3) at subsection (c) sets forth the elements of utilizing the Commission's testing lab; (4) at subsection (d) relates notification requirements after the Commission approves a card-minding system; (5) at subsection (e) sets forth provisions regarding checksum or digital signatures; (6) at subsection (f) states that the Commission's approval or disapproval of any component of a card-minding system is administratively final; and (7) at subsections (g) and (h) sets forth the manufacturers' financial responsibilities with regard to testing and audits.

A public comment hearing was held on Wednesday, February 29, 2012 at 10:00 a.m. An individual representing Texas VFW, River City Bingo and over 350 charitable organizations was present at the hearing and commented against the new rule as proposed. The Commission did not receive any written comments on the new rule during the public comment period.

Comment: There is no mention of the use of player rewards cards that are being used today. The rules should not prohibit the implementation of establishment of player-customer rewards programs. We want to make sure these rules don’t prohibit that by silence. They’re in existence and operating today with good results.

Agency Response: The rules would not prohibit the use of any player tracking or player rewards programs.

Comment: Are these sufficient for a third-party independent testing lab to know exactly what they’re going to approve?

Agency Response: Based on discussions with two of the three major gaming labs, the rules are sufficient for a third-party independent testing lab to know what they are going to approve.

The new rule 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.


(a) A card-minding system must not be sold, leased, or otherwise furnished to any person for use in the conduct of bingo until it has first been tested and certified as compliant with the standards in this subchapter by an independent testing facility or the Commission's own testing lab. The card-minding system shall be submitted for testing at the manufacturer's expense. The testing facility should be required to ensure that the card-minding system conforms to the restrictions and conditions set forth in these standards. The approval process is set forth in subsections (b) - (f) of this section.

(b) Utilizing an Independent Testing Facility:

(1) Manufacturer has card-minding system ready for submission, and informs the Commission in writing prior to the submission;

(2) Manufacturer submits system to lab with letter outlining the card-minding system to be tested for approval in Texas;

(3) Lab performs validation testing to ensure compliance with the Commission's requirements. Testing may include functional testing and/or modification testing, if applicable;

(4) Lab communicates with manufacturer and/or Commission on any questions arising from testing;

(5) Lab creates certification report which includes file verification methodology, software/firmware signatures (checksum) and testing results;

(6) Manufacturer submits approval request with certification report to the Commission;

(7) Once the Commission has received the certification report from the independent testing facility, the Commission may request a demonstration of the product; and

(8) The Commission shall either approve or disapprove the submission based on the test results and inform the manufacturer of the results within thirty (30) calendar days of receipt of the test results.

(c) Utilizing the Commission's testing lab:

(1) Manufacturer has card-minding system ready for submission;

(2) Manufacturer submits system to Commission with letter outlining system specifics;

(3) Testing lab may request a demonstration of the system prior to testing;

(4) Lab performs validation testing to ensure compliance with Commission's requirements. This testing may include functional testing and/or modification testing, if applicable;

(5) Lab communicates with manufacturer on any questions arising from testing;

(6) Lab recommends approval or denial of the system within forty-five (45) calendar days from submission date; and

(7) The Commission issues an approval or denial letter to the manufacturer which includes software/firmware signatures (checksum).

(d) After the Commission approves a card-minding system, the manufacturer shall notify the Commission of the date, time and place of the first installation of the system so that a Commission representative may observe and review the card-minding system.

(e) Checksum or digital signatures will be obtained from the proprietary software submitted for testing to be used to verify that proprietary software at playing locations is the same as the software that was approved.

(f) The decision by the director to approve or disapprove any component of a card-minding system is administratively final.

(g) The manufacturer shall be responsible for the costs related to the testing of card-minding systems to include the fees charged by independent testing facilities or the Commission testing lab.
(h) The manufacturer shall be responsible for the travel costs incurred by the Commission to audit the initial installation of a card-minding system in the state of Texas.

(i) All card-minding system approvals issued by the Commission prior to the effective date of this section remain valid. Any subsequent changes or modifications to an approved system require compliance with 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.

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16 TAC §402.325
The Texas Lottery Commission (Commission) adopts new 16 TAC §402.325 (Card-Minding Systems--Licensed Authorized Organizations Requirements) with changes to the proposed text as published in the February 17, 2012, issue of the Texas Register (37 TexReg 840). Specifically, in the adopted version of the rule, the agency has: (1) added language in subsection (c) to help clarify what information is required; (2) removed the term "time" in subsection (c) and added language to clarify the date as the date of the bingo occasion; (3) revised language in subsection (d) to further clarify when a voided transaction would occur; the process of voiding card-minding devices that were "pre-loaded" is described in subsection (e); (4) revised subsection (d) to clarify when a player's information must be recorded on a void receipt; (5) removed subsection (d)(1) and (d)(2) and added language to clarify the requirement is only for cash refunds; and (6) replaced "must" with "may" in subsection (f) to make this a permissive rather than mandatory requirement.

The purpose of the new rule is to provide licensed authorized organizations the requirements and guidelines for utilizing bingo card-minding systems. Specifically, the new rule addresses: (1) site system accessibility via remote connection; (2) verification that receipts for sessions display the correct organization name, location name, time and date; (3) verification that the end of occasion report(s) displays the correction organization name, location name, time, date, and all other required information; (4) how licensed authorized organization's must treat voided transactions; (5) information regarding presales; (6) at subsections (f) - (i) recordkeeping requirements; (7) devices must be loaded or enabled on the premises where the game will be played; (8) the prohibition of reserving card-minding devices for players; (9) printing or occasion report(s) on the site system; (10) that the bingo player must be physically present during the game on the premises where the game is actually conducted; (11) the prohibition of adding or removing any software program to an approved card-minding system; and (12) that no organization may display, use, or otherwise furnish a card-minding device which has been marked, defaced, or tampered with which may deceive the player or affect a player's chances of winning.

A public comment hearing was held on Wednesday, February 29, 2012 at 10:00 a.m. Individuals representing the following groups were present at the hearing and commented against the new rule as proposed: Texas VFW, River City Bingo and over 350 charitable organizations, Boys & Girls Club, Fort Worth Bookkeeping (16 Unit Bingo Halls), AmVets Post 52, Texas Charity Advocates, Trend Gaming Systems, LLC, AmVets Auxiliary, AmVets-Redmen, and the Bingo Interest Group. The Commission did not receive any written comments on the new rule during the public comment period.

Comment: The new rule represents a new requirement of storing certain data into the card-minding system or the software related to it. At least initially, the requirements should be permissive, not mandatory. Some bingo halls including River City already capture the data and find it helpful as a management tool. But there are other halls that have decided they don't need it and for which it will be difficult and involve costs.

Agency Response: The agency concurs with the commenter and has replaced "must" with "may" in subsection (f) to make this a permissive rather than mandatory requirement.

Comment: Under subsection (c), "all other required information" is not clear.

Agency Response: The agency concurs and has added language to help clarify what information is required.

Comment: The way the language in subsection (d) is drafted, it catches too much data and will slow down the process. If you make it difficult on the customer, the customer will find some other place to go, and it may be to another bingo hall. If they have the same problem, they're not going to play bingo. They will go find another venue to spend their entertainment dollar. If the organization pre-loads a bunch of computers, then anything that's left over before the session starts has to be voided. There is not a customer to take their information from. I'm not sure how that would be handled if we had to void transactions immediately with customer's name and phone number on it.

Agency Response: The term "void" as used in this subchapter refers to canceling a previous transaction that resulted in electronic bingo cards being loaded and enabled on a card-minding device and resulting in a cash refund to the player. Language in subsection (d) has been revised to further clarify when a voided transaction would occur. The process of voiding card-minding devices that were "pre-loaded" is described in subsection (e).

Comment: Players don't want to give out their data, ever. And so what you're forcing us to do is to get our customers to do something that they don't want to do. The other thing is, since this is now at the agency, is it now a part of the public record process? We track our name, address telephone number, address, perhaps an email if they give it to us, that data, sure, but that's our data and that I would argue is trade secret data. As an alternative language under subsection (d)(5), the recording of information, you should only--and again, we don't want to have this information provided but, if it has to be, it's only for the cash refund situation. Again, if it's just an exchange, there is a void involved.

Agency Response: The agency concurs with the commenter and has revised subsection (d) to clarify when a player's information must be recorded on a void receipt.

Comment: Under subsection (f)--this is a new standard--the charity must record all bingo sales on the card-minding system point of sale. It's unclear if it has to be instantaneous. In the
case of River City, we already record this information, but it is not instantaneous. At the end of the session, that data is going to be recorded. Make it permissive, not mandatory at this time.

Agency Response: The agency concurs with the commenter and has replaced "must" with "may" in subsection (f) to make this a permissive rather than a mandatory requirement.

Comment: The requirement in subsection (l) to print an occasion report after the last game has been completed should be permissive. It's not necessary if the data is stored in the system. There are other requirements that it must be maintained internally for four years. If the agency asks to see the data, an organization could provide it either in electronic or hard copy format.

Agency Response: The agency disagrees with the commenter and believes that the occasion report must be printed in order for the organization to properly complete their occasion cash report.

Comment: Subsection (k) provides that card-minding devices may not be reserved for players. The organization should be allowed to make that decision. A restaurant owner can do it. Bowling centers reserve special lanes for special customers. Bingo is also an entertainment venue. If the charity decides to risk offending some customers because a particular seat is reserved, that is the charity or the bingo hall's problem, not the Commission's.

Agency Response: The agency disagrees with the commenter. Each player should have an equal opportunity to use the available devices on a first come, first served basis.

Comment: In subsection (n), we agree with the first sentence that says the charity may not add to or remove any program. The second sentence, however, suggests that if the Commission detects that there is software that has been changed, the card-minding system is deemed to have an unauthorized modification. Although that is true, it shouldn't be in a conductor requirement. Placed in this rule, it suggests that the charity could be punished in some way, absent a showing that the charity had actually modified it. It ought to be in either the card-minding standard or the manufacturer standard, not here and not in the distributor requirements.

Agency Response: The agency disagrees with the commenter. The language in subsection (n) is necessary to provide the organization clear and concise direction that if the organization adds or removes any software related to conduct of bingo on the card-minding system, the organization will be held liable for the violation of this provision. Additionally, similar language is contained in §402.326 for distributors.

Comment: Under subsection (e), if the pre-sales are made and the associated cards are not purchased, then they have to be voided by the start of the second game. This should be permissive or revised to void at the end of the session. Again, if the hall is busy or there is a power outage, compliance would be hugely problematic. For extraordinary instances, there should be language that they don't have to do that. If you've lost power and have 350 people, you can imagine the process to get everyone's name, address, telephone number, signed and voided receipts.

Agency Response: The agency disagrees with the commenter. The provisions of this rule are intended for normal routine daily activities and not for extraordinary circumstances. The organization should have procedures in place for such extraordinary circumstances as required in §402.200 of this chapter.

Comment: Clarify that the paper-only bingo halls are exempt from all these rules.

Agency Response: 16 TAC §§402.321 - 402.328 are intended for locations that utilize bingo card-minding systems.

Comment: Subsection (c) states that the licensed authorized organization must ensure that the occasion report displays the time. It is unclear whether "time" refers to the licensed playing time or the time that the report is generated.

Agency Response: The term "time" has been removed and language added to clarify the date as the date of the bingo occasion.

Comment: In subsection (d)(1) requiring void transactions to be processed immediately, the meaning of "voided transaction" needs clarification. To me, a transaction occurs only when money has been exchanged.

Agency Response: The agency concurs and has removed subsection (d)(1) and (d)(2) and added language to clarify the requirement is only for cash refunds.

Comment: Subsection (f), must record all bingo sales, etcetera, my question is, is this done at the point of the sale or the transaction? If it is, this is going to be a cashier's nightmare. Or can recording all these transactions be done at the end of the bingo occasion? The charities are trying so hard to keep their expenses low and to keep the customers happy so the customers keep coming back. They're trying to stay afloat. Several of the halls only employ one cashier. This requirement would add an unnecessary expense to the charity for hiring an additional cashier to comply.

Agency Response: The agency concurs with the commenter and has replaced "must" with "may" in subsection (f) to make this a permissive rather than mandatory requirement.

Comment: Regarding subsection (a), the industry would like to know what information will be available via open records request and what won't. The main concern is that sales information should remain proprietary.

Agency Response: Texas Government Code, Chapter 552, the Public Information Act, governs requests for access to government information.

Comment: Regarding subsection (f), concern is that it's double duty for people who are already running a card-minding system. If this is required, it should replace the occasion cash report requirement so that there is not a cash report requirement in addition to capturing that information on the card-minding device.

Agency Response: The agency concurs with the commenter and has replaced "must" with "may" in subsection (f) to make this a permissive rather than mandatory requirement.

Comment: Subsection (f) creates additional requirements for inputting paper and pull-tabs. How do you correct it if there was a mistake made? Do we have to call staff and get permission? Do we have to call the distributors and get an access code? In addition, the distributors and the manufacturers are going to have to update and maintain this. They're going to pass that cost along to the charities. That's an allowable will go up incrementally as the data increases. They're not going to give us that service for free. The distributors and the manufacturers do not believe they have a right to my daily cash reports. That seriously would violate the integrity of my proprietary information. That should not be made available to anyone but the staff.
Agency Response: The agency concurs with the commenter and has replaced "must" with "may" in subsection (f) to make this a permissive rather than mandatory requirement.

Comment: Keeping the original voided receipts is excessive because the printed occasion report already lists the voids that occur during that session.

Agency Response: The agency disagrees with the commenter. The requirement of maintaining voided receipts pertains only to those where there is a cash refund.

Comment: The likelihood of a charity being able to modify the programming on a card-minder is very remote. And so the second sentence of subsection (n) really probably ought to go somewhere else.

Agency Response: The agency disagrees with the commenter. The language in subsection (n) is necessary to provide the organization clear and concise direction that if the organization adds or removes any software related to conduct of bingo on the card-minding system, the organization will be held liable for the violation of this provision. Additionally, similar language is contained in §§402.326 for distributors.

Comment: Subsections (b) and (c) contain requirements that would seem to be a good requirement without regard to the card-minding system, and the language of the provision itself doesn't really tie it to card-minding systems.

Agency Response: The agency concurs with the commenter.

The new rule 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.


(a) The licensed authorized organization must ensure the site system is accessible to the Commission via remote connection at all times.

(b) The licensed authorized organization must ensure that the receipts for its bingo occasion display the correct licensed authorized organization name, location name, time, and date.

(c) The licensed authorized organization must ensure that the occasion report displays the correct licensed authorized organization name, location name, date of the bingo occasion, and all other required information contained in §402.321(11) of this chapter.

(d) The licensed authorized organization must treat void transactions resulting in a cash refund in the following manner:

1. The player must present the original receipt which was issued at the time of the purchase of the card-minding device before the purchase can be voided;

2. The word "void" shall be clearly printed on the receipt issued once the void has occurred;

3. The player must write his or her name, address, telephone number, signature, and amount of refund on the back of the void receipt before a partial or full refund may be issued; and

4. All voided receipts must be attached to the bingo occasion report printed at the end of each bingo occasion and maintained with the records.

(e) If presales are made and the associated cards are not purchased, loaded, and enabled for play on a card-minding device, then those presales must be voided by the start of the second game of the occasion.

(f) Each licensed authorized organization may record all bingo sales, including sales of card-minding devices, disposable cards, instant bingo pull-tab tickets and event bingo pull-tab tickets and all bingo prizes awarded, including both regular bingo and pull-tab bingo, on the card-minding system point of sale station. Disposable cards, instant bingo pull-tab tickets and event bingo pull-tab tickets sales and bingo prizes awarded may be recorded at the end of the session.

(g) Each licensed authorized organization purchasing, leasing, or otherwise utilizing a card-minding system must maintain a log or other records showing the following:

1. the date the card-minding system was installed or removed; and

2. the name and license number of the distributor from which the card-minding system was purchased, leased or otherwise obtained.

(h) If multiple licensed authorized organizations hold an interest in a card-minding system, a single record identifying each licensed authorized organization should be retained on the premises where the card-minding system is utilized.

(i) The licensed authorized organization must retain all records, reports, and receipts relating to the card-minding system's transactions, maintenance, and repairs for a period of 48 months for examination by the Commission. Such records shall be kept on the premises where the licensed authorized organization is licensed to conduct bingo, or at a location designated in writing to the Commission by the licensed authorized organization.

(j) All card-minding devices must be loaded or enabled for play on the premises where the game will be played.

(k) Card-minding devices may not be reserved for players. Each player shall have an equal opportunity to use the available devices on a first come, first served basis.

(l) After the last game of the bingo occasion has been completed, the licensed authorized organization shall print an occasion report from the site system.

(m) The bingo player must be physically present during the game on the premises where the game is actually conducted.

(n) A licensed authorized organization may not add to or remove any software program related to the conduct of bingo to an approved card-minding system. If the Commission detects or discovers a card-minding system at a bingo premises that is using components or software that were not approved by the Commission as required, the card-minding system is deemed to have an unauthorized modification.

(o) No licensed authorized organization may display, use, or otherwise furnish a card-minding device which has in any manner been tampered with, or which otherwise may deceive the player or affect a player's chances of winning.

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.
16 TAC §402.326

The Texas Lottery Commission (Commission) adopts new 16 TAC §402.326 (Card-Minding Systems--Distributor Requirements) without changes to the proposed text as published in the February 17, 2012, issue of the Texas Register (37 TexReg 842). The purpose of the new rule is to provide licensed distributors requirements and guidelines for distributing bingo card-minding devices for use in Texas. Specifically, the new rule addresses: (1) at subsection (a) distributors' installation requirements; (2) at subsection (b) distributors' notification requirements; (3) at subsection (c) separate site system requirements; (4) at subsection (d) record-keeping requirements; (5) at subsection (e) invoice requirements; (6) at subsection (f) initial contact with respect to requests for installation, service, maintenance or repair of card-minding devices and site systems; (7) at subsection (g) components and software requirements; and (8) at subsection (h) affecting players' chances of winning.

A public comment hearing was held on Wednesday, February 29, 2012 at 10:00 a.m. No individuals commented at the hearing on the proposed new rule and the Commission did not receive any written comments on the new rule during the public comment period.

The new rule 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.


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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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: July 1, 2012
Proposal publication date: February 17, 2012
For further information, please call: (512) 344-5275

16 TAC §402.327

The Texas Lottery Commission (Commission) adopts new 16 TAC §402.327 (Card-Minding Systems--Security Standards) with changes to the proposed text as published in the February 17, 2012, issue of the Texas Register (37 TexReg 843).

Specifically, a new subsection (h) has been added to the rule and states, "All card-minding system approvals issued by the Commission prior to the effective date of this section remain valid. Any subsequent changes or modifications to an approved system require compliance with this section." The purpose of the new rule is to provide manufacturers the expected security standards to be employed with the bingo card-minding system. Specifically, the new rule states: (1) a card-minding device or site system shall not be a video lottery machine or machine that simulates play of a video game; (2) a card-minding device or site system shall provide password protection; (3) the site system or a card-minding device shall be able to provide the winning game patterns required for an entire bingo occasion; (4) the manufacturer shall provide the Commission with all current protocols, usernames, passwords, etc., to access the system; (5) the manufacturer and distributor shall notify the Commission of any changes to number (4) above within 10 calendar days of any change; (6) the system shall have sufficient safeguards in place; and (7) a manufacturer shall employ sufficient security safeguards in designing and manufacturing the card-minding system.

A public comment hearing was held on Wednesday, February 29, 2012 at 10:00 a.m. An individual representing Texas VFW, River City Bingo and over 350 charitable organizations was present at the hearing and commented against the new rule as proposed. The Commission did not receive any written comments on the new rule during the public comment period.

Comment: Under §402.327, the security standards, there is no reference to player tracking card awards programs that should be allowed. This should be allowed somewhere in your system.

Agency Response: The rules would not prohibit the use of any player tracking or player rewards programs.

The new rule 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.


(a) A card-minding device or site system shall not be a video lottery machine or machine that, upon insertion of cash, is available to play or simulate the play of a video game, including but not limited to video poker, keno, and blackjack, utilizing a video display and microprocessor in which the player may receive free games or credits that can be redeemed for cash, coins, or tokens or that directly dispenses cash, coins, or tokens.

(b) The card-minding device or site system shall provide password protection for each organization at a location using the device or site system.

(c) The site system or a card-minding device shall be able to provide the winning game patterns required for the entire bingo occasion. A printout or electronic display of the winning patterns must be available at the bingo occasion upon request by patrons or Commission personnel.

(d) The manufacturer shall provide to the Commission all current protocols, usernames, passwords, and any other required information needed to access the system prior to the operation of the system within Texas.
(e) The manufacturer and distributor shall notify the Commission of any changes they have made in the protocols, usernames, passwords, and any other required information needed to access the system within ten (10) calendar days of the change.

(f) The system shall have sufficient security safeguards to ensure that any restrictions or requirements authorized by the Commission or any approved proprietary software are protected from alteration.

(g) A manufacturer of a card-minding system shall employ sufficient security safeguards in designing and manufacturing the card-minding system such that only approved proprietary software used directly in the operation of bingo are accessible by the licensed authorized organization.

(h) All card-minding system approvals issued by the Commission prior to the effective date of this section remain valid. Any subsequent changes or modifications to an approved system require compliance with 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.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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Proposal publication date: February 17, 2012
For further information, please call: (512) 344-5275

16 TAC §402.328

The Texas Lottery Commission (Commission) adopts new 16 TAC §402.328 (Card-Minding Systems—Inspections and Restrictions) without changes to the proposed text as published in the February 17, 2012, issue of the Texas Register (37 TexReg 844). The purpose of the new rule is to provide licensed organizations with the requirements related to the inspection and examination of bingo card-minding systems. Specifically, the new rule sets forth provisions regarding: (1) the Commission’s examination and inspection of card-minding systems; (2) records requested by the Commission; (3) the Commission’s actions upon discovering any problem with the card-minding system affecting the security and/or integrity of the bingo game or card-minding system; (4) the required actions of manufacturers, distributors, or licensed authorized organizations upon discovery of any defect, malfunction, or problem with the card-minding system that affects the security and/or integrity of the bingo game or card-minding system; (5) the Commission’s potential additional examination or inspection of bingo card-minding systems; and (6) manufacturer’s demonstration of a non-approved card-minding system or any secondary component.

A public comment hearing was held on Wednesday, February 29, 2012 at 10:00 a.m. No individuals commented at the hearing on the proposed new rule, and the Commission did not receive any written comments on the new rule during the public comment period.

The new rule 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.


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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Kimberly L. Kiplin
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Texas Lottery Commission
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For further information, please call: (512) 344-5275

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

The State Board of Education (SBOE) adopts amendments to §§66.1, 66.10, 66.21, 66.22, 66.27, 66.33, 66.36, 66.45, 66.48, 66.51, 66.54, 66.57, 66.63, 66.66, 66.67, 66.72, 66.73, 66.75, 66.78, 66.101, 66.104, 66.105, and 66.107 and the repeal of §§66.102, 66.121, 66.124, and 66.131, concerning the state adoption and distribution of instructional materials. The amendments to §§66.1, 66.21, 66.33, 66.45, 66.57, 66.67, 66.73, 66.78, 66.104, and 66.107 and the repeal of §§66.102, 66.121, 66.124, and 66.131 are adopted without changes to the proposed text as published in the February 24, 2012, issue of the Texas Register (37 TexReg 1064) and will not be republished. The amendments to §§66.10, 66.22, 66.27, 66.36, 66.48, 66.51, 66.54, 66.63, 66.66, 66.72, 66.75, 66.101, and 66.105 are adopted with changes to the proposed text as published in the February 24, 2012, issue of the Texas Register. The sections establish procedures for the adoption, purchase, and distribution of instructional materials. The adopted amendments and repeals incorporate changes resulting from Senate Bill (SB) 6, 82nd Texas Legislature, First Called Session, 2011.

House Bill (HB) 2488 and HB 4294, 81st Texas Legislature, 2009, made significant changes pertaining to the review, adoption, acquisition, and distribution of instructional materials. The SBOE approved revisions to 19 TAC Chapter 66 in January and March 2010 in response to legislation. The 2010 revisions included updates to rules relating to publisher contracts, proclamation amendments, state review panel eligibility and appointment criteria, and pre-adoption samples and corrected copies of adopted materials. The 2010 revisions also included updates to rules relating to revisions, updates, and substitutions; selection of instructional materials by school districts; and requisitions, inventory, and disposition of Braille and large type instructional materials. The 2010 revisions added new rules relating to the adoption of open-source instructional materials.
contracts for printing open-source instructional materials, credit for textbooks purchased below the established cost limit, and certification that each school district provides instructional materials that cover all elements of the essential knowledge and skills. The 2010 revisions also repealed an outdated rule relating to a pilot project for certain students enrolled in courses for concurrent high school and college credit.

SB 6, 82nd Texas Legislature, 2011, made significant changes pertaining to the review, adoption, and purchase of instructional materials and technological equipment for public schools. SB 6 changes include the establishment of the instructional materials allotment, including certification of alignment with the Texas essential knowledge and skills for instructional materials used by the district, and specification that a reference to a textbook means instructional materials. The statutory changes resulting from SB 6 necessitate revisions to rules in 19 TAC Chapter 66.

Proposed revisions to 19 TAC Chapter 66, Subchapters A-E, to incorporate statutory changes resulting from SB 6 were approved by the SBOE for first reading and filing authorization at the January 2012 meeting. The SBOE approved the proposed revisions for second reading and final adoption at the April 2012 meeting, as follows.

Subchapter A, General Provisions

Section 66.1, Scope of Rules, was amended to remove reference to conforming and nonconforming instructional materials.

Section 66.10, Procedures Governing Violations of Statutes—Administrative Penalties, was amended to reference instructional materials rather than textbooks and to clarify what is considered dated or inferior information.

In response to public comment, the following changes were made to §66.10 at adoption. Subsection (c)(2) was revised to clarify that an error repeated in multiple components is counted as a single error. Subsection (c)(3) was revised to remove the requirement that publishers submit errata sheets to provide flexibility in how to submit corrections. Subsection (c)(4), relating to the timeframe for assessing penalties, was deleted to allow for publishers to correct errors before instructional materials are delivered to schools. Subsection (d), relating to categories of factual errors, was deleted to provide for a more uniform penalty for errors. New subsection (d), relating to penalties, was added and subsections (e) and (f), relating to first- and second-year penalties, were deleted to provide for a uniform penalty of $5,000 for each failure to correct a factual error. Subsequent subsections were re-lettered accordingly. A technical edit was made at adoption to re-lettered subsection (e), originally subsection (g), to remove reference to language that is no longer in rule.

Subchapter B, State Adoption of Instructional Materials

Section 66.21, Review and Adoption Cycles, was amended to establish that no more than one-fourth of the subjects in the foundation curriculum may be reviewed each biennium. Additionally, criteria for prioritizing the subjects in the adoption cycle were added.

Section 66.22, Midcycle Review and Adoption, was amended to reference instructional materials rather than textbooks and to remove reference to conforming and nonconforming instructional materials.

In response to public comment, the following change was made to §66.22 at adoption. Subsection (b) was revised to use the term "instructional materials product" instead of "instructional materials program" for consistency with other similar references.

Section 66.27, Proclamation, Public Notice, and Schedule for Adopting Instructional Materials, was amended to remove language that would require amending a proclamation to conform to state textbook funding levels; to update content submission requirements for proclamations, including the removal of references to the maximum cost for adopted instructional materials and the addition of specific requirements for samples filed with state review panels and requirements relating to instructions for submission of open-source instructional materials; and to reference instructional materials rather than textbooks. Additionally, the requirement regarding the 50% required minimum coverage of essential knowledge and skills was clarified.

In response to public comment, the following changes were made to §66.27 at adoption. Subsection (a) was revised to establish that proclamations shall be issued no sooner than 18 months before schedule adoption of new instructional materials by the SBOE. Subsection (b)(3) was revised to establish that the samples that publishers must file with state review panels may be print samples, electronic samples in an open file format or closed format, or galley proofs in order to allow for flexibility in the production of samples that can be reviewed for content and coverage of the Texas essential knowledge and skills (TEKS). Subsection (c) was revised to clarify that TEKS may be covered in the electronic equivalent of a student text narrative and the electronic equivalent of an end-of-section review exercise, an end-of-chapter activity, or a unit test.

Section 66.33, State Review Panels: Appointment, was amended to make a technical correction in a reference to the state review panels.

Section 66.36, State Review Panels: Duties and Conduct, was amended to clarify the procedures for panel members to evaluate coverage of essential knowledge and skills, to clarify that the state panel members shall have no contact with other members of the panel regarding instructional materials being reviewed except during official meetings, and to reference instructional materials rather than textbooks. Additionally, language was added to require that all recommendations to the commissioner include panel member signatures.

In response to public comment, the following changes were made to §66.36 at adoption. Subsection (a)(1) was revised to clarify that TEKS may be covered in the electronic equivalent of a student text narrative and the electronic equivalent of an end-of-section review exercise, an end-of-chapter activity, or a unit test. Subsection (a)(1)(D) was revised to change the phrase "one or more" to "one" to remove ambiguity. Proposed new subsection (a)(1)(H) and (I), relating to coverage of TEKS, were deleted since TEKS coverage is described elsewhere in Chapter 66.

Section 66.45, State Review Panels: No-Contact Periods, was amended to remove reference to conforming and nonconforming instructional materials.

Section 66.48, Statement of Intent to Bid Instructional Materials, was amended to require publishers to indicate the percentage of coverage of essential knowledge and skills by its submitted instructional materials, to remove reference to conforming and nonconforming instructional materials, and to reference instructional materials rather than textbooks.
In response to public comment, the following changes were made to §66.48 at adoption. Subsection (c), relating to the requirement that publishers provide details about student and teacher components in the statement of intent to bid, was deleted to leave the details of the components to the bid process. Subsequent subsections were re-lettered accordingly.

Section 66.51, Instructional Materials Purchased by the State, was amended to remove references to the maximum cost for adopted instructional materials, to allow an extension of the contract terms to no more than 12 years, to reference instructional materials rather than textbooks, and to clarify language relating to coverage of essential knowledge and skills. Additionally, the requirements relating to non-adopted instructional materials were removed. The section title was also changed to "Instructional Materials Ordered Through the State" instead of "Instructional Materials Purchased by the State."

In response to public comment, the following changes were made to §66.51 at adoption. Paragraph (3), which established specific requirements relating to a teacher's component, and proposed paragraph (7), which established specific requirements for consumable and nonconsumable components and consumable materials, were deleted to provide flexibility with respect to instructional materials format. Remaining paragraphs were renumbered accordingly. Paragraph (9), renumbered at adoption as paragraph (7), was revised to clarify that TEKS may be covered in the electronic equivalent of a student text narrative and the electronic equivalent of an end-of-section review exercise, an end-of-chapter activity, or a unit test.

Section 66.54, Samples, was amended to reduce the number of samples required to be submitted to regional education service centers; to require publishers to submit electronic samples to school districts upon request, with the exception of prekindergarten materials; to add specific requirements for samples provided to state review panels and the Texas Education Agency (TEA); and to update the TEC definition of instructional materials.

In response to public comment, the following changes were made to §66.54 at adoption. Subsection (a) was revised to broaden language requiring that instructional materials be complete as to content and functional for review purposes and making it unnecessary to have separate requirements for electronic products. Subsection (b) was revised to update requirements for providing an SBOE member with instructional materials submitted for adoption, including making available an electronic copy in an open file format or closed format, for consistency with other sections in the chapter that require electronic samples. Subsections (c) and (e) were revised to require that electronic samples be provided in an open file format or closed format instead of "platform neutral" in consideration of the operating systems of many devices now used in classrooms. Subsections (f) and (k) were revised to modify language relating to samples requested by a school district to allow a publisher to provide print sample copies in addition to an electronic sample of instructional materials at the publisher's discretion or upon request. Subsection (g) was revised to establish that the samples that publishers must file with state review panels may be print samples, electronic samples in an open file format or closed format, or galley proofs in order to allow for flexibility in the production of samples that can be reviewed for content and coverage of the TEKS. Subsection (j) was revised to update requirements for providing the TEA with sample copies of adopted instructional materials for consistency with other sections in the chapter that require electronic samples.

Section 66.57, Regional Education Service Centers: Procedures for Handling Samples; Public Access to Samples, was amended to update requirements for electronic samples retained for public review.

Section 66.63, Report of the Commissioner of Education, was amended to remove reference to conforming and nonconforming instructional materials and to clarify language relating to coverage of essential knowledge and skills.

In response to public comment, the following change was made to §66.63 at adoption. Subsection (a)(1) was revised to clarify that TEKS may be covered in the electronic equivalent of a student text narrative and the electronic equivalent of an end-of-section review exercise, an end-of-chapter activity, or a unit test.

Section 66.66, Consideration and Adoption of Instructional Materials by the State Board of Education, was amended to remove reference to conforming and nonconforming instructional materials and to revise language relating to coverage of essential knowledge and skills.

In response to public comment, the following changes were made to §66.66 at adoption. Subsection (c)(3) was revised to modify the requirements for adopted instructional materials to conform with statute that allows a publisher to submit an affidavit certifying that the instructional materials are free of factual errors or that errors will be corrected prior to the execution of the contract. Subsection (f) was revised to remove stipulations for allowing a publisher to withdraw from the adoption process in order to allow a publisher to withdraw at any time prior to final adoption.

Section 66.67, Adoption of Open-Source Instructional Materials, was amended to reference instructional materials rather than textbooks and to remove reference to conforming and nonconforming instructional materials. For clarification, language was added regarding certification by a board of regents or corresponding governing body. Additionally, language was added regarding SBOE review of the materials and the dissemination of SBOE comments regarding the open-source instructional materials placed on the adopted list. Language was removed regarding assessing fines for university-developed open-source instructional materials. Language was also removed regarding the compliance of an institution providing university-developed open-source materials with duties of publishers.

Section 66.72, Preparing and Completing Contracts, was amended to reference instructional materials rather than textbooks. A technical edit was made at adoption to correct a cross reference.

Section 66.73, Contracts for Printing of Open-Source Textbooks, was amended to reference instructional materials rather than textbooks and to remove a reference to conforming and nonconforming instructional materials. Additionally, the section title was changed to "Contracts for Printing of Open-Source Instructional Materials" instead of "Contracts for Printing of Open-Source Textbooks."

Section 66.75, Updates, was amended to reference instructional materials rather than textbooks.

In response to public comment, the following changes were made to §66.75 at adoption. Subsection (a) was revised to allow publishers to submit mock-ups or screen captures when
requesting approval for updates in order to accommodate electronic instructional materials. Subsection (e) was revised to specify that updates shall be deemed approved if no action has been taken within 30 days in order to establish a timeline for approval. Subsection (f) was revised to include an additional opportunity for publishers to make certain changes to instructional materials in order to make room for continual innovation by allowing editorial changes that do not affect TEKS coverage. Subsection (g), relating to electronic design changes, was deleted to remove the need for approval of electronic design changes that do not affect coverage of TEKS or add new content. Subsequent subsections were re-lettered accordingly.

Section 66.78, Delivery of Adopted Instructional Materials, was amended to remove the requirement for a publisher to maintain a depository in Texas and to reference instructional materials rather than textbooks.

Subchapter C, Local Operations

Section 66.101, Sample Copies of Instructional Materials for School Districts, was amended to update and clarify language relating to electronic samples that publishers must provide to school districts and open-enrollment charter schools.

In response to public comment, the following changes were made to §66.101 at adoption. Subsection (b) was revised to require that electronic samples be provided in an open file format or closed format instead of "platform neutral" in consideration of the operating systems of many devices now used in classrooms. Subsection (b) was also revised to specify that while samples may be provided in demonstration or representative format, it is not necessary to provide identical sampling, which will allow publishers to better customize the samples to the benefit of school districts and charter schools.

Section 66.102, Textbook Credits, was repealed.

Section 66.104, Selection of Instructional Materials by School Districts, was amended to remove requirements relating to the maximum cost for adopted instructional materials, conforming and nonconforming instructional materials, non-adopted instructional materials, and classroom sets. Language was also removed relating to restrictions on returning instructional materials, reimbursement for receipt of an insufficient number of materials, and specifications for publisher depositories. Language regarding instructional materials furnished by the state was removed.

Section 66.105, Certification by School Districts, was amended to update language relating to the required curriculum and instructional materials.

In response to public comment, the following changes were made to §66.105 at adoption. Subsection (a) was revised to specify that certifications must include supporting documentation. Subsection (b) was added to specify requirements for ratification of certifications. Subsection (c) was added to specify that certifications apply to both state-adopted as well as non-state-adopted instructional materials in order to establish specific assurances to be included in school district certifications.

Section 66.107, Local Accountability, was amended to remove requirements relating to placing orders based upon student enrollment and returning surplus instructional materials.

Subchapter D, Special Instructional Materials

Subchapter D, comprised of §66.121, Special Instructional Materials, and §66.124, Authorizing State Funds, was repealed.

Subchapter E, Disposition of Instructional Materials

Subchapter E, comprised of §66.131, Out-of-Adoption Instructional Materials, was repealed.

As a result of the adopted rule actions, appropriate changes will be incorporated into the Educational Materials (EMAT) system. The adopted amendments and repeals have no new locally maintained paperwork requirements.

The Texas Education Agency 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.

In accordance with the TEC, §7.102(f), the SBOE approved the amendments for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2012-2013 school year in order to implement the latest policy in a timely manner. The effective date for the revisions is 20 days after filing as adopted.

Following is a summary of the public comments received and the corresponding responses regarding the proposed revisions to 19 TAC Chapter 66, Subchapters A-E.


Comment: The Association of American Publishers, Inc., (AAP) commented that penalties should only apply to factual errors that interfere with student learning and proposed removing the reference to any error as specified in §66.10(c)(1).

Response: The SBOE disagreed and determined it was appropriate to consider penalties for any type of error, including a grammatical error, that would interfere with student learning. Grammatical error could be a misspelled word or an incorrect sentence structure. Those types of errors are not considered factual but they do interfere with student learning.

Comment: The AAP commented that identical errors found in multiple components and formats of the same instructional material should be counted as a single error.

Response: The SBOE agreed and took action to add language in §66.10(c)(2) to specify that identical errors found in materials with multiple components and formats shall be counted as one error.

Comment: The AAP commented that errata sheets are not the most efficient method for making corrections and recommended striking the errata sheet reference in §66.10(c)(3).

Response: The SBOE agreed and took action to modify the rule text in §66.10(c)(3) regarding errata sheets.

Comment: The AAP commented that the penalties for each factual error identified after the established deadline should be removed if the errors are corrected before the materials are delivered to schools.

Response: The SBOE agreed and took action to remove §66.10(c)(4), which provided a penalty to publishers for each factual error identified after the established deadline.

Comment: The AAP commented that multiple categories of errors in §66.10(d) are not required. The AAP stated that the SBOE has the authority to assess penalties for errors that interfere with student learning.
Response: The SBOE agreed and took action to remove §66.10(d), which provided multiple categories of errors.

Comment: The AAP commented that the rule text in §66.10(e) should be amended to provide a uniform penalty of $5,000 for failure to correct each factual error.

Response: The SBOE agreed and took action to remove §66.10(e) and add new §66.10(d) to provide for a uniform penalty of $5,000 for failure to correct each factual error.

Comment: The AAP commented that §66.10(f) should be removed because a uniform penalty of $5,000 would not require a separate rule for second-year penalties.

Response: The SBOE agreed and took action to remove §66.10(f).

Comment: The AAP commented that language should be added as new §66.10(g) to assess penalties against a seller of instructional materials who sells the district or school a sample copy of a state adopted instructional material that contains a factual error.

Response: The SBOE disagreed and determined that a penalty, as specified by rule, could not be imposed upon a reseller that does not have a contract with the SBOE.

Comment: The AAP commented that §66.10(i) should be removed because web-based materials are covered by the general provisions of the existing rules.

Response: The SBOE disagreed and determined that it was appropriate to maintain specific provisions relating to administrative penalties against a publisher who fails to maintain a website or provide a suitable alternative for conveying the information on the website.

§66.22. Midcycle Review and Adoption.

Comment: The AAP commented that §66.22(b) should be amended to change "product" to "program" to be consistent with rule language.

Response: The SBOE agreed and took action to modify §66.22(b) to change "product" to "program."


Comment: The AAP commented that §66.24(c) should be amended to require contract renewal prices to be mutually agreed upon between the publisher and the commissioner to allow for flexibility with pricing.

Response: This comment is outside the scope of the proposed rulemaking. No changes to §66.24 were under consideration for second reading and final adoption at the April 2012 SBOE meeting. However, the SBOE took action to approve for first reading and filing authorization proposed amendment to §66.24(c) to require contract renewal prices to be mutually agreed upon between the publisher and the commissioner. The SBOE is scheduled to consider the proposed amendment to §66.24(c) for second reading and final adoption at the July 2012 SBOE meeting.


Comment: The AAP commented that §66.27(a) should be amended to allow publishers additional content development time from the scheduled adoption of the new instructional materials.

Response: The SBOE agreed and took action to modify §66.27(a) to allow publishers additional content development time. The proclamation shall be issued at least 18 months before the scheduled adoption of the new instructional materials instead of 12 months.

Comment: The AAP commented that §66.27(b)(3) should be amended to allow publishers flexibility to produce samples that can be reviewed for content and coverage of the Texas essential knowledge and skills (TEKS).

Response: The SBOE agreed and took action to modify §66.27(b)(3) to allow publishers to file with the state review panel print samples, electronic samples in an open file format or closed format, or galley proofs.

Comment: The Instructional Materials Coordinators’ Association of Texas (IMCAT) commented that §66.27(c) should be amended to reinforce the importance of teacher components and prohibit any limitations with the use of teacher components to satisfy the essential knowledge and skills requirements.

Response: The SBOE disagreed with amending §66.27(c) to prohibit limitations with the use of teacher components to satisfy the essential knowledge and skills. The teacher edition must satisfy the TEKS during the state review panel evaluations as specified in §66.36(a)(1). In response to other comments, however, the SBOE took action to modify §66.27(c) at adoption to clarify that the TEKS may be covered in the electronic equivalent of a student text narrative and the electronic equivalent of an end-of-section review exercise, an end-of-chapter activity, or a unit test.

Comment: The AAP commented that §66.27(c) should be amended to provide publishers greater flexibility with placement of the curriculum-aligned content within the student and teacher editions. The AAP also recommended conforming changes in §66.36(a)(1), §66.51(a)(9), and §66.63(a)(1).

Response: The SBOE agreed to allow publishers greater flexibility with placement of content and took action to modify §66.27(c). However, the SBOE determined that the curriculum alignment must be covered at least once in the student text narrative or its electronic equivalent and once in an end-of-course section review exercise, an end-of-chapter activity, or a unit test or their electronic equivalents. The SBOE also modified §66.36(a)(1), §66.51(a)(9), and §66.63(a)(1) to reflect the identical rule text changes made in §66.27(c).


Comment: The AAP commented that proposed §66.36(a)(1)(D) should be amended to reduce ambiguity in the instructions for identifying the TEKS alignment.

Response: The SBOE agreed and took action to modify §66.36(a)(1)(D) to reduce ambiguity in the instructions for identifying the TEKS alignment.

Comment: The AAP commented that proposed §66.36(a)(1)(G)-(I) should be removed to align with the rule changes in §66.27(c).

Response: The SBOE agreed in part and disagreed in part. The SBOE took action to remove proposed §66.36(a)(1)(H) and (I) to align with the rule amendments in §66.27(c). However, the SBOE retained language in §66.36(a)(1)(G) to require that student expectations must be clearly evident in instructional materials to ensure sufficient coverage.

§66.48. Statement of Intent to Bid Instructional Materials.
Comment: The AAP commented that §66.48(c) should be removed because the details of the components will be provided in the instructional materials bid process.

Response: The SBOE agreed and took action to remove §66.48(c) because the details of the components will be provided in the instructional materials bid process.

§66.51. Instructional Materials Ordered Through the State.

Comment: The AAP commented that §66.51(a)(3) should be removed to provide greater flexibility for lowering costs to districts.

Response: The SBOE agreed and took action to remove §66.51(a)(3) to provide greater flexibility for lowering costs to districts.

Comment: The AAP commented that proposed §66.51(a)(4) should be amended to provide publishers the flexibility in pricing multi-year agreements.

Response: The SBOE disagreed. Publishers of adopted instructional materials enter into a contract with the SBOE and must provide their program at the price submitted on their bid.

Comment: The IMCAT commented that proposed §66.51(a)(5) does not reflect publisher's bid prices for teacher components. The IMCAT stated that school districts have indicated their desire to purchase only the teacher edition.

Response: The SBOE took the following clarification. The SBOE took action to amend §66.51(a)(3) to provide greater flexibility for lowering costs by providing instructional material components that best meet the need of a district. The SBOE did not take any action to amend §66.51(a)(5).

Comment: The AAP commented that proposed §66.51(a)(6) should be stricken to remove the requirement for publishers to certify the names of the individuals who contributed to the development of the instructional material. The AAP stated that this act of fraud is better remedied under the Texas Deceptive Trade Practices Act.

Response: The SBOE disagreed and retained the language in order to ensure that individuals who contributed to the development of instructional materials were content experts.

Comment: The AAP commented that proposed §66.51(a)(7) should be removed to provide publishers with broad flexibility with the instructional materials format, configuration, and price models.

Response: The SBOE agreed and took action to remove proposed §66.51(a)(7).

§66.54. Samples.

Comment: The AAP commented that separate requirements for electronic products as specified in §66.54(a) are unnecessary if samples are complete as to content and functional for review purposes.

Response: The SBOE agreed and took action to modify §66.54(a) to require publishers to submit samples that are complete as to content and functional for review purposes.

Comment: The AAP commented that §66.54(b) should be amended to require that publishers provide the SBOE members with electronic samples of instructional materials to be consistent with other sections in 19 TAC Chapter 66.

Response: The SBOE agreed and took action to modify §66.54(b) to require publishers of instructional materials submitted for adoption to make available to each SBOE member an electronic copy of their instructional material in an open file format or closed format.

Comment: The AAP commented that language regarding submitting samples to the education service center in §66.54(c) should be amended to remove reference to platform neutral because the terminology is old and does not consider the operating systems of many devices used in the classrooms.

Response: The SBOE agreed and took action to modify §66.54(c) to remove reference to platform neutral to ensure operating systems of other devices used in the classroom were considered.

Comment: The AAP commented that language regarding submitting samples to the Texas Education Agency (TEA) in §66.54(e) should be amended to remove reference to platform neutral because the terminology is old and does not consider the operating systems of many devices used in the classrooms.

Response: The SBOE agreed and took action to modify §66.54(e) to remove reference to platform neutral to ensure operating systems of other devices used in the classroom were considered.

Comment: The AAP commented that language regarding providing samples to districts in §66.54(f) and (k) should be amended to remove references to platform neutral because the terminology is old and does not consider the operating systems of many devices used in the classrooms.

Response: The SBOE agreed and took action to modify proposed §66.54(f) and (k) to remove references to platform neutral to ensure operating systems of other devices used in the classroom were considered. The SBOE also took action to modify the language to allow school districts to request print samples upon request.

Comment: The IMCAT commented that proposed §66.54(f) should be amended to provide districts the latitude to ask publishers to provide print samples of instructional materials.

Response: The SBOE agreed and took action to modify §66.54(f) to allow publishers to provide print samples of instructional materials upon request.

Comment: The AAP commented that proposed §66.54(g) should be amended to provide publishers options to file samples with the state review panel members due to the limited time to develop products.

Response: The SBOE agreed and took action to modify §66.54(g) to provide publishers with options to file with the state review panels print samples, electronic samples in an open file format or closed format, or galley proofs.

Comment: The AAP commented that proposed §66.54(i) should be amended to require publishers to submit lists of factual errors rather than lists of every change needed in the final version.

Response: The SBOE disagreed and determined that it is necessary for publishers to submit lists of every change in order to facilitate efficient production of Braille and large-type instructional materials.

Comment: The AAP commented that proposed §66.54(j) should be amended to remove rule text that requires publishers to submit programs to the TEA in a format that matches the final program.
Response: The SBOE agreed and took action to modify §66.54(j) to remove rule text that requires publishers to submit programs to the Texas Education Agency in a format that matches the final program. This amendment is consistent with other rule changes that require samples in an electronic format.

§66.66. Consideration and Adoption of Instructional Materials by the State Board of Education.

Comment: The AAP commented that §66.66(c)(3) should be amended to allow a publisher's agreement to correct factual errors to satisfy the requirement that materials be free from factual errors at the time of adoption.

Response: The SBOE agreed and modified §66.66(c)(3) to add language to allow a publisher's agreement to correct factual errors to satisfy the requirement that materials be free from factual errors at the time of adoption.

Response: The SBOE agreed in part and disagreed in part. The SBOE took action to modify §66.66(f) to allow publishers to withdraw from the adoption process at any time for any reason, however, the SBOE stipulated that the withdrawal must occur prior to final adoption.

§66.69. Ancillary Materials.

Comment: The AAP commented that §66.69 should be deleted to provide publishers greater flexibility with product configuration to meet the needs of school districts.

Response: This comment is outside the scope of the proposed rulemaking. No changes to §66.69 were under consideration for second reading and final adoption at the April 2012 SBOE meeting. However, the SBOE took action to approve for first reading and filing authorization the proposed repeal of §66.69 to provide publishers flexibility with product configuration to meet the needs of school districts. The SBOE is scheduled to consider the proposed repeal of §66.69 for second reading and final adoption at the July 2012 SBOE meeting.

§66.75. Updates.

Comment: The Texas & Southern States for TechNet (TechNet) and the director of governmental relations for the Texas Computer Education Association (TCEA) commented that §66.75(a) should be amended to provide publishers the opportunity to submit screen captures for adopted content that is under consideration for an approved update or substitution.

Response: The SBOE agreed and took action to modify §66.75(a) to allow publishers to submit two mock-ups or screen capture copies of the updated instructional materials.

Comment: The TechNet and the TCEA director of governmental relations commented that §66.75(c) should be deleted to provide publishers an opportunity to update their content during the first year of the adoption without the approval of the commissioner.

Response: The SBOE disagreed and determined it was necessary for the commissioner of education to retain the authority to approve content changes during the first year of the adoption to ensure TEKS alignment has not changed.

Comment: The TechNet and the TCEA director of governmental relations commented that §66.75(e) should be amended to allow for automatic approval of updates to adopted content if official approval has not been received from the commissioner within 30 days.

Response: The SBOE agreed and took action to modify §66.75(e) to provide a timeline for publishers that have submitted an update to the adopted content. Language was added to specify that if no action has been taken by the end of the 30 days, the updates to the adopted content shall be deemed approved.

Comment: The TechNet and the TCEA director of governmental relations commented that §66.75(f) should be amended to assess penalties against publishers who fail to submit updates to content.

Response: The SBOE disagreed and determined that the language in §66.75(f) relating to requests for updates was appropriate as written because fines can be assessed against publishers who fail to obtain approval for updates. In response to another comment, the SBOE took action to modify §66.75(f) by adding language to allow publishers to update their programs at any time as long as the changes do not affect coverage of the TEKS.

Comment: The AAP commented that §66.75(f) should be amended to allow publishers to update their programs at any time as long as the TEKS are not affected.

Response: The SBOE agreed and took action to modify §66.75(f) by adding language to allow publishers to update their programs at any time as long as they do not affect coverage of the TEKS.

Comment: The TechNet and the TCEA director of governmental relations commented that §66.75(g) should be amended to permit publishers to make electronic design changes to their products after submitting for the record any electronic design changes that do not affect TEKS coverage rather than having to wait for commissioner's approval before making requested changes.

Response: In response to another comment, the SBOE took action to delete §66.75(g) in its entirety.

Comment: The AAP commented that §66.75(g) should be deleted because approval is not required for electronic design changes that do not affect coverage of the TEKS.

Response: The SBOE agreed and took action to delete §66.75(g).

Comment: The TechNet and the TCEA director of governmental relations commented that the requirement in §66.75(h), adopted as §66.75(g), relating to the availability of prior versions does not apply to online instructional materials.

Response: The SBOE agreed that §66.75(h), adopted as §66.75(g), clearly establishes that subsection (g) does not apply to online instructional materials.

§66.79. Adding Content During the Review and Adoption Process.

Comment: The AAP commented that new §66.79 should be added to provide publishers the opportunity to provide content during the review process only to meet the percentage of TEKS specified by the publisher.

Response: This comment is outside the scope of the proposed rulemaking. New §66.79 was not under consideration for second reading and final adoption at the April 2012 SBOE meeting.
However, the SBOE took action to approve for first reading and filing authorization proposed new §66.79 to allow publishers to add content to an instructional material during the review and adoption process only to allow the material to meet the percentage of the TEKS the publisher had specified the material covered. The SBOE is scheduled to consider the proposed new rule for second reading and final adoption at the July SBOE meeting.


Comment: The AAP commented that §66.101(b) should be amended to remove language that references platform neutral because the terminology is old and does not consider the operating systems of many devices used in the classrooms. The AAP also supported retaining language allowing publishers to provide samples in demonstration or representative format while removing the requirement that identical copies of electronic samples be required because schools are using different configurations and platforms.

Response: The SBOE agreed and took action to modify §66.101(b) to remove reference to platform neutral and to retain language allowing publishers to provide samples in demonstration or representative format.

§66.104. Selection of Instructional Materials by School Districts.

Comment: The IMCAT commented that §66.104(a) requiring school boards to adopt a policy for selecting instructional materials is sufficient for the time being.

Response: The SBOE agreed.


Comment: The AAP commented that §66.105 should be amended to require school districts, upon request by the commissioner of education, to include supporting documentation that describes the instructional materials on which the certification is based.

Response: The SBOE agreed and took action to modify §66.105 to add language to require school districts, upon request by the commissioner of education, to include supporting documentation that describes the instructional materials on which the certification is based. The SBOE took further action to require that certifications be ratified by local school boards in public, noticed meetings and to specify that the provisions relating to supporting documentation and school board ratification are applicable to both state-adopted and non-state-adopted instructional materials.

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§66.1, §66.10

The amendments are adopted under the Texas Education Code (TEC), §7.102(c), which authorizes the SBOE to adopt rules required by the TEC, Chapter 31, and §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials.

The amendments implement the Texas Education Code, §7.102(c) and Chapter 31.


(a) Complaints. An official complaint alleging a violation of the Texas Education Code, §31.151, must be filed with the commissioner of education. The commissioner may hold a formal or informal hearing in the case of an apparent violation of statute. Upon determining that a violation has occurred, the commissioner shall report his or her findings to the State Board of Education (SBOE).

(b) Administrative penalties. Under the Texas Education Code, §31.151(b), the SBOE may impose a reasonable administrative penalty against a publisher or manufacturer found in violation of a provision of §31.151(a). An administrative penalty shall be assessed only after the SBOE has granted the publisher or manufacturer a hearing in accordance with the Texas Education Code, §31.151, and the Administrative Procedure Act.

(c) Penalties for failure to correct factual errors.

(1) A factual error shall be defined as a verified error of fact or any error that would interfere with student learning. The context, including the intended student audience and grade level appropriateness, shall be considered.

(2) A factual error repeated in a single item or contained in both the student and teacher components of instructional material shall be counted once for the purpose of determining penalties. An identical error in materials with multiple components and formats shall be counted as one error.

(3) A penalty may be assessed for failure to correct a factual error identified in the list of corrections submitted by a publisher under §66.54(i) of this title (relating to Samples) or for failure to correct a factual error identified in the report of the commissioner of education under §66.63(d) of this title (relating to Report of the Commissioner of Education) and required by the SBOE. The publisher shall identify errata in an appropriate manner.

(d) Penalties. A penalty of $5,000 shall be assessed for each failure to correct a factual error after the deadline established in the proclamation by which publishers must have submitted corrected samples of adopted instructional materials.

(e) Penalties for failure to deliver adopted instructional materials, including teacher components, in a timely manner or in the quantities the school district or open-enrollment charter school is eligible to receive as specified in the publisher’s bid. The SBOE may assess penalties as allowed by law against publishers who fail to deliver adopted instructional materials, including teacher components, in accordance with provisions in the contracts.

(f) Penalties for selling instructional materials with factual errors. The SBOE may assess administrative penalties in accordance with the Texas Education Code, §31.151, against a seller of instructional materials who sells instructional materials with factual errors.

(g) Penalties for failure to maintain websites in state-adopted products. The SBOE may assess administrative penalties against a publisher who fails to maintain a website or provide a suitable alternative for conveying the information in the website, or who otherwise fails to meet the requirements of this subsection. Where applicable, the publisher shall monitor, update, and maintain any in-house and third party electronic, web-based, or online products furnished as part of the instructional materials specified in State of Texas Official Publisher Contract for the period determined by the SBOE. If, at any time during the contract period, the commissioner of education determines in a hearing that electronic, web-based, or online instructional materials furnished and supplied under the terms of a contract have faulty manufacturing characteristics or display dated or inferior information that is not in alignment with the Texas essential knowledge and skills that were in place at the time of the materials’ original adoption, the instructional materials or information shall be replaced with complying materials or information by the publishers without cost to the state. The publisher
further agrees that electronic, web-based or online instructional materials listed in a State of Texas Official Publishers Contract will not be altered in any way that would remove content from the curriculum, or that would change content in the curriculum without prior SBOE approval. The publisher will not allow advertising of any type to be placed in or associated with the materials. The publisher will not add any Internet links to the materials without the approval of the commissioner of education, will not redirect any user accessing the web-based or online instructional materials to other Internet or electronic sites, and will not collect any information about the user or computer accessing the materials that would allow determination of personal information, including email addresses. This section applies only to a website that is a component used to address Texas essential knowledge and skills as part of a state-adopted product.

(h) State Board of Education discretion regarding penalties. The SBOE may, if circumstances warrant, waive or vary penalties contained in this section for first or subsequent violations based on the seriousness of the violation, any history of a previous violation or violations, the amount necessary to deter a future violation, any effort to correct the violation, and any other matter justice requires.

(i) Payment of fines. Each affected publisher shall issue credit to the Texas Education Agency (TEA) in the amount of any penalty imposed under the provisions of this section. When circumstances warrant it, TEA is authorized to require payment of penalties in cash within ten days. Each affected publisher who pays a fine for failure to deliver adopted instructional materials in a timely manner will not be subject to the liquidated damages provision in the publisher's contract for the same failure to deliver adopted instructional materials in a timely manner.

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

Filed with the Office of the Secretary of State on June 18, 2012.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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SUBCHAPTER B. STATE ADOPTION OF INSTRUCTIONAL MATERIALS

19 TAC §§66.21, 66.22, 66.27, 66.33, 66.36, 66.45, 66.48, 66.51, 66.54, 66.57, 66.63, 66.66, 66.67, 66.72, 66.73, 66.75, 66.78

The amendments are adopted under the Texas Education Code (TEC), §7.102(c), which authorizes the SBOE to adopt rules required by the TEC, Chapter 31, and §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials.

The amendments implement the Texas Education Code, §7.102(c) and Chapter 31.

§66.22. Midcycle Review and Adoption.

(a) The State Board of Education (SBOE) shall adopt a midcycle review and adoption for instructional materials for a subject for which instructional materials are not currently under review by the SBOE under the Texas Education Code (TEC), §31.022.

(b) The SBOE shall establish a fee not to exceed $10,000 for each instructional materials program submitted for midcycle review.

(c) A publisher who intends to offer instructional materials for midcycle review shall submit a statement of intent to bid that includes a commitment from the publisher to provide the instructional materials to school districts in the manner specified by the publisher, which may include:

(1) providing the instructional materials to any district in a regional education service center area identified by the publisher; or

(2) providing a certain maximum number of instructional materials specified by the publisher.

(d) Instructional materials submitted for midcycle review shall be placed on the adopted list or rejected as specified in TEC, §31.023 and §31.024.

(e) The publisher of instructional materials submitted for midcycle review shall enter into a contract with the SBOE for a term that ends at the same time as any contract entered into by the SBOE for instructional materials for the same subject and grade level.

(f) The publisher of instructional materials submitted for midcycle review is not required to ship samples to education service centers or school districts as specified in TEC, §31.027.

(g) The publisher of instructional materials submitted for midcycle review shall make available up to three examination copies of each submitted instructional materials product, including teacher editions and ancillaries, to each SBOE member upon that member's request, beginning on the date in the adoption schedule when publishers file their samples at the Texas Education Agency (TEA). SBOE members may request publishers through the TEA to ship these items directly to interested citizens. Publishers participating in the midcycle review process are responsible for all expenses incurred by their participation. The state does not guarantee return of these SBOE-requested materials.

(h) Publishers of Internet-based instructional content submitted for midcycle review shall provide the TEA, and SBOE members upon request, with appropriate information, such as locator and login information and passwords, required to ensure public access to their programs throughout the midcycle review period.

(i) The midcycle adoption process shall follow the same procedures as the regular adoption except to the extent specified in this chapter.

(j) The SBOE will implement this section only to the extent the commissioner of education determines that funds are appropriated for that purpose.


(a) The State Board of Education (SBOE) shall issue a proclamation calling for new instructional materials according to the review and adoption cycles for foundation and enrichment subjects adopted by the SBOE. The proclamation shall serve as notice to all publishers and to the public that bids to furnish new materials to the state are being invited. The proclamation shall be issued at least 18 months before the scheduled adoption of the new instructional materials by the SBOE. The SBOE shall designate a request for the production of instructional materials in a subject area and grade level by the school year in which the instructional materials are intended to be made available in class-
rooms and not by the school year in which the SBOE makes the request for production.

(b) The proclamation shall contain the following:

(1) specifications for essential knowledge and skills in each subject for which bids are being invited;

(2) the requirement that a publisher of adopted instructional materials for a grade level other than prekindergarten must submit an electronic sample of the instructional materials as required by the Texas Education Code, §31.027(a) and (b), and may not submit a print sample copy;

(3) the requirement that publishers file with the state review panels print samples, electronic samples in an open file format or closed format, or galley proofs;

(4) an estimated number of units to be purchased during the first contract year for each subject in the proclamation;

(5) specifications for providing computerized files to produce braille versions of adopted instructional materials;

(6) a schedule of adoption procedures; and

(7) instructions for the submission of open-source instructional materials that are available for use by the state without charge on the same basis as instructional materials offered for sale.

(c) The proclamation shall require the instructional materials submitted in response to the proclamation to cover at least 50% of the specific essential knowledge and skills for the subject area and grade level for which the materials are intended at least once in the student text narrative or its electronic equivalent and once in either an end-of-section review exercise, an end-of-chapter activity, or a unit test or their electronic equivalents.

(d) A draft copy of the proclamation shall be provided to each member of the SBOE and to representatives of the publishing industry to solicit input regarding the draft proclamation prior to the scheduled adoption by the SBOE. The Texas Education Agency may use the Internet to facilitate this process. Any revisions recommended as a result of input from publishers shall be presented to the SBOE along with the subsequent draft of the proclamation.

(e) Under extraordinary circumstances, the SBOE may adopt an emergency, supplementary, or revised proclamation without complying with the timelines and other requirements of this section.

(f) The SBOE may issue a proclamation for instructional materials eligible for midcycle review. The midcycle proclamation shall contain the following:

(1) specifications for essential knowledge and skills in each subject for which bids are being invited;

(2) specifications for providing computerized files to produce braille versions of adopted instructional materials;

(3) a fee not to exceed $10,000 for each program or system of instructional materials intended for a certain subject area and grade level submitted for midcycle review; and

(4) a schedule of midcycle adoption procedures.


(a) The duties of each member of a state review panel are to:

(1) evaluate all instructional materials submitted for adoption in each subject assigned to the panel to determine if essential knowledge and skills are covered in the student version of the instructional materials as well as in the teacher version of the instructional materials. Nothing in this rule shall be construed to contravene the Texas Education Code (TEC), §28.004(e)(5), which makes coverage of contraception and condom use optional in both the student and teacher editions of health instructional materials. Panel members will use State Board of Education-approved procedures for evaluating coverage of the essential knowledge and skills at least once in the student text narrative or its electronic equivalent and once in either an end-of-section review exercise, an end-of-chapter activity, or a unit test or their electronic equivalents. The approved procedures include the following.

(A) State review panel members must participate in training to ensure clear and consistent guidelines for determining full Texas essential knowledge and skills (TEKS) coverage within the instructional materials.

(B) State review panel members must participate in a team during the review and reach a consensus to determine if the TEKS have been covered sufficiently in the instructional materials.

(C) Instructional materials shall be evaluated for TEKS coverage at each grade level.

(D) A TEKS standard is considered sufficiently covered if the instructional materials provide one of the following:

(i) an opportunity for the teacher to teach the knowledge or skill;

(ii) an opportunity for the student to learn the knowledge or skill; or

(iii) an opportunity for the student to demonstrate the knowledge or practice the skill.

(E) If a TEKS standard has multiple student expectations, the requirements of subparagraph (D) of this paragraph will be applied to each student expectation to ensure sufficient coverage.

(F) TEKS standards are not considered covered if only included in side bars, captions, or questions at the end of a section or chapter.

(G) Each student expectation must be clearly evident in the instructional materials to ensure sufficient coverage.

(2) make recommendations to the commissioner of education that each submission assigned to be evaluated by the state review panel be placed on the adopted list or rejected;

(3) submit to the commissioner of education a list of any factual errors in instructional materials discovered during the review conducted by the state review panel; and

(4) as appropriate to a subject area and/or grade level, ascertain that instructional materials submitted for adoption do not contain content that clearly conflicts with the stated purpose of the TEC, §28.002(h).

(b) State review panel members shall not accept meals, entertainment, gifts, or gratuities in any form from publishers, authors, or depositaries; agents for publishers, authors, or depositaries; any person who holds any official position with publishers, authors, depositaries, or agents; or any person or organization interested in influencing the selection of instructional materials.

(c) Before presenting recommendations to the commissioner of education, state review panel members shall be given an opportunity to request a meeting with a publisher to obtain responses to questions regarding instructional materials being evaluated by the state review panel. Questions shall be provided to publishers in advance of the meeting.
(d) State review panel members shall be afforded the opportunity to collaborate with other panel members during the official meetings to discuss coverage of TEKS, errors, manufacturing specifications, or any other aspect of instructional materials being evaluated. A member of a state review panel shall have no contact with other members of the panel regarding the instructional materials being reviewed, except during official meetings. State review panel members shall not discuss instructional materials being evaluated with any party having a direct or indirect interest in adoption of instructional materials.

(e) State review panel members shall affix their signatures to all recommendations to the commissioner of education.

(f) Members of each state review panel may be required to be present at the State Board of Education meeting at which instructional materials are adopted.

§66.48. Statement of Intent to Bid Instructional Materials.

(a) Each publisher who intends to offer instructional materials for adoption shall submit a statement of intent to bid and preliminary price information on or before the date specified in the schedule of adoption procedures. The statement of intent with preliminary price information shall be accompanied by publisher’s data submitted in a form approved by the commissioner of education.

(b) A publisher shall indicate the percentage of Texas essential knowledge and skills that it believes are sufficiently covered in the instructional materials.

(c) A publisher shall specify hardware or special equipment needed to review any item included in an instructional materials submission.

(d) Additions to a publisher’s submission shall not be accepted after the deadline for filing statements of intent, except as allowed in the schedule of adoption procedures included in the proclamation. A publisher who wishes to withdraw an instructional materials submission after having filed a statement of intent to bid shall notify the commissioner of education in writing on or before the date specified in the schedule of adoption procedures.

(e) A publisher who intends to offer instructional materials for midcycle review shall submit a statement of intent to bid and price information on or before the date specified in the schedule of adoption procedures under midcycle review. The statement of intent to bid must:

1. specify the manner in which instructional materials will be provided to school districts, including:
   (A) the regional education service center area(s) to be served; or
   (B) the certain maximum number of copies of instructional materials to be provided under the contract; and

2. include payment of the fee for review of instructional materials submitted for midcycle review.

§66.51. Instructional Materials Ordered Through the State.

Instructional materials offered for adoption by the State Board of Education.

1. Publishers may not submit instructional materials for adoption that have been authored by an employee of the Texas Education Agency (TEA).

2. The official bid price of an instructional material submission may exceed the price included with the statement of intent to bid filed under §66.48 of this title (relating to Statement of Intent to Bid Instructional Materials).

3. Any discounts offered for volume purchases of adopted instructional materials shall be included in price information submitted with statement of intent to bid and in the official bid.

4. The official bid filed by a publisher shall include separate prices for each item included in an instructional material submission. The publisher shall guarantee that individual items included in the student and/or teacher component shall be available for local purchase at the individual prices listed for the entire contract period. (Individual component prices are listed to show school districts the replacement costs of components and not to reflect publisher’s bid prices for these components.)

5. Publishers shall submit to the TEA a signed affidavit certifying that each individual whose name is listed as an author or contributor of the instructional materials contributed to the development of the instructional materials. The affidavit shall also state in general terms each author’s involvement in the development of the instructional materials.

6. Student materials offered for adoption may include consumable components in subjects and grade levels in which consumable materials are not specifically called for in the proclamation. In such cases, publishers must meet the following conditions.

(A) The per student price of the materials must include the cost of replacement copies of consumable student components for the full term of the adoption and contract, including any extensions of the contract terms, but for no more than 12 years. The offer must be set forth in the publisher’s official bid.

(B) The publisher’s official bid shall contain a clear explanation of the terms of the sale, including the publisher’s agreement to supply consumable student materials for the duration of the contract and extensions as noted in subparagraph (A) of this paragraph.

(C) The publisher and the school district shall determine the manner in which consumable student materials are supplied beyond the initial order year.

7. On or before the deadline established in the schedule of adoption procedures, publishers shall submit correlations of instructional materials submitted for adoption with essential knowledge and skills required by the proclamation. These correlations shall include essential knowledge and skills covered at least once in the student text narrative or its electronic equivalent and once in either an end-of-section review exercise, an end-of-chapter activity, or a unit test or their electronic equivalents. Correlations shall be submitted in a format approved by the commissioner of education.

§66.54. Samples.

(a) Samples of student and teacher components of instructional materials submitted for adoption shall be complete as to content and functional for review purposes.

(b) The publisher of instructional materials submitted for adoption shall make available an electronic copy in an open file format or closed format of each submitted student and teacher component to each State Board of Education (SBOE) member upon that member’s request, beginning on the date in the adoption schedule when publishers file their samples at the Texas Education Agency (TEA).

(c) One electronic sample copy in an open file format or closed format of the student and teacher components of each instructional materials submission shall be filed with each of the 20 regional education service centers (ESC’s) on or before the date specified in the schedule of adoption procedures. The TEA may request additional samples if they are needed. These samples shall be available for public review. Publishers of Internet-based instructional content submitted for review
shall provide the ESCs with appropriate information, such as locator and login information and passwords, required to ensure public access to their programs throughout the review period. Samples to ESCs are not required for instructional materials submitted for midcycle review, as specified in §66.22(f) of this title (relating to Midcycle Review and Adoption).

(d) If it is determined that good cause exists, the commissioner of education may extend the deadline for filing samples with ESCs. At its discretion, the SBOE may remove from consideration any materials proposed for adoption that were not properly deposited with the ESCs, the TEA, or members of the state review panel.

(e) One electronic sample copy in an open file format or closed format of each student and teacher component of an instructional materials submission shall be filed with the TEA on or before the date specified in the schedule of adoption procedures. The TEA may request additional samples if they are needed. In addition, the publisher shall provide a complete description of all items included in a student and teacher component of an instructional materials submission.

(f) On request of a school district, a publisher shall provide an electronic sample of submitted instructional materials and, at the publisher's discretion or upon request, may also provide print sample copies. A publisher of prekindergarten materials is not required to submit electronic samples of submitted prekindergarten instructional materials. Samples of submitted prekindergarten materials must match the format of the products to be provided to schools upon ordering.

(g) One sample copy of each student and teacher component of an instructional materials submission shall be filed with each member of the appropriate state review panel in accordance with instructions provided by the TEA. Publishers have the option to file with the state review panels print samples, electronic samples in an open file format or closed format, or galley proofs. To ensure that the evaluations of state review panel members are limited to student and teacher components submitted for adoption, publishers shall not provide ancillary materials or descriptions of ancillary materials to state review panel members. Texas Education Code, §31.002, defines instructional materials as content that conveys the essential knowledge and skills of a subject in the public school curriculum through a medium or a combination of media for conveying information to a student. The term includes a book, supplementary materials, a combination of a book, workbook, and supplementary materials, computer software, magnetic media, DVD, CD-ROM, computer coursework, on-line services, or an electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means, including open-source instructional material.

(h) The TEA, ESCs, and affected publishing companies shall work together to ensure that hardware or special equipment necessary for review of any item included in a student and/or teacher component of an instructional materials submission is available in each ESC. Affected publishers may be required to loan such hardware or special equipment to any member of a state review panel who does not have access to the necessary hardware or special equipment.

(i) A publisher shall provide a list of all corrections necessary to each student and teacher component of an instructional materials submission. The list must be in a format designated by the commissioner of education and filed on or before the deadline specified in the schedule of adoption procedures. If no corrections are necessary, the publisher shall file a letter stating this on or before the deadline in the schedule of submitting the list of corrections. On or before the deadline for submitting lists of corrections, publishers shall submit certification that all instructional materials have been edited for accuracy, content, and compliance with requirements of the proclamation.

(j) One complete electronic sample copy in an open file format or closed format of each student and teacher component of adopted instructional materials that incorporate all corrections required by the SBOE shall be filed with the commissioner of education on or before the date specified in the schedule of adoption procedures. The complete sample copies filed with the TEA must be representative of the final program. In addition, each publisher shall file an affidavit signed by an official of the company verifying that all corrections required by the commissioner of education and SBOE have been made.

(k) On request of a school district, a publisher shall provide an electronic sample of adopted instructional materials and, at the publisher's discretion or upon request, may also provide print sample copies. A publisher of prekindergarten materials is not required to submit electronic samples of adopted prekindergarten instructional materials. Samples of adopted prekindergarten materials must match the format of the products to be provided to schools upon ordering.

(l) Publishers participating in the adoption process are responsible for all expenses incurred by their participation. The state does not guarantee return of sample instructional materials.


(a) The commissioner of education shall review all instructional materials submitted for consideration for adoption. The commissioner's review shall include the following:

(1) evaluations of instructional materials prepared by state review panel members, including recommendations that instructional materials be placed on the adopted list or rejected. To be adopted, instructional materials must cover at least 50% of the essential knowledge and skills as required by the proclamation at least once in the student text narrative or its electronic equivalent and once in either an end-of-section review exercise, an end-of-chapter activity, or a unit test or their electronic equivalents;

(2) compliance with established manufacturing standards and specifications;

(3) recommended corrections of factual errors identified by state review panels;

(4) prices of instructional materials submitted for adoption; and

(5) whether instructional materials are offered by a publisher who refuses to rebid instructional materials according to §66.24 of this title (relating to Review and Renewal of Contracts).

(b) Based on the review specified in subsection (a) of this section, the commissioner of education shall prepare preliminary recommendations that instructional materials under consideration be placed on the adopted list or rejected. According to the schedule of adoption procedures, a publisher shall be given an opportunity for a show-cause hearing if the publisher elects to protest the commissioner's preliminary recommendation.

(c) The commissioner of education shall submit to the State Board of Education (SBOE) final recommendations that instructional materials under consideration be placed on the adopted list or rejected.

(d) The commissioner of education shall submit for SBOE approval a report on corrections of factual errors that should be required in instructional materials submitted for consideration. The report on recommended corrections shall be sent to the SBOE, affected publishers, regional education service centers (ESCs), and other persons, such as brailists, needing immediate access to the information. The commissioner shall obtain written confirmation from publishers that they would be willing to make all identified corrections should they be required by the SBOE.
§66.66. Consideration and Adoption of Instructional Materials by the State Board of Education.

(a) Publishers shall file three copies of the official bid form with the commissioner of education according to the schedule of adoption procedures.

(b) A committee of the State Board of Education (SBOE) shall be designated by the SBOE chair to review the commissioner's report concerning instructional materials recommended for state adoption. The committee shall report the results of its review to the SBOE.

(c) The SBOE shall adopt a list of adopted instructional materials in accordance with the Texas Education Code (TEC), §31.023. Instructional materials may be adopted only if they:

1. meet at least 50% of the Texas essential knowledge and skills (TEKS) for the subject and grade level in the student version of the instructional materials as well as in the teacher version of the instructional materials. In determining the percentage of elements of the TEKS covered by instructional materials, each student expectation shall count as an independent element of the TEKS of the subject;

2. meet the established physical specifications adopted by the SBOE;

3. are free from factual errors or the publisher has agreed to correct any identified factual errors prior to execution of a contract pursuant to §66.72 of this title (relating to Preparing and Completing Contracts); and

4. receive majority vote of the SBOE. However, no instructional material may be adopted that contains content that clearly conflicts with the stated purpose of the TEC, §28.002(h).

(d) Instructional materials submitted for placement on the adopted list may be rejected by majority vote of the SBOE in accordance with the TEC, §31.024.

(e) The SBOE shall either adopt or reject each submitted instructional material in accordance with the TEC, §31.024.

(f) A publisher may withdraw from the adoption process at any time prior to final adoption for any reason.

§66.72. Preparing and Completing Contracts.

(a) The state contract form shall not be changed or modified without approval of the Texas Education Agency's (TEA) legal counsel.

(b) Contract forms shall be sent to the publishers for signature. Signed contracts returned by the publishers shall be signed by the chair of the State Board of Education (SBOE) and attested to by the commissioner of education. Properly signed and attested contracts shall be filed with the TEA.

(c) The publisher of instructional materials submitted for mid-cycle review shall:

1. enter into a contract with the SBOE for a term that ends at the same time as any contract entered into by the SBOE for other instructional materials for the same subject and grade level; and

2. commit to provide the instructional materials in the manner specified by the publisher in the statement of intent to bid midcycle materials in §66.48(e) of this title (relating to Statement of Intent to Bid Instructional Materials).

§66.75. Updates.

(a) A publisher may submit a request to the commissioner of education for approval to substitute an updated edition of state-adopted instructional materials. A publisher requesting an update shall provide the request in writing, along with two mock-ups or screen capture copies of the updated edition, and one copy of the corresponding state-adopted instructional material. This section includes electronic instructional materials and Internet products for which all users receive the same updates.

(b) Requests for approval of the updated edition shall provide that there will be no additional cost to the state.

(c) Requests for approval of the updates shall not be approved during the first year of the original contract unless the commissioner of education determines that changes in technology, curriculum, or other reasons warrant the updates.

(d) Publishers submitting requests for approval of the updates must certify in writing that the new material meets the applicable essential knowledge and skills and is free from factual errors.

(e) Responses from the commissioner of education to update requests shall be provided within 30 days after receipt of the request. If no action has been taken by the end of the 30 days, the updates shall be deemed approved.

(f) All requests for updates involving content in state-adopted instructional materials must be approved by the State Board of Education (SBOE) prior to their introduction into state-adopted instructional materials. The SBOE may assess penalties as allowed by law against publishers who fail to obtain approval for updates to content in state-adopted instructional materials prior to delivery of the materials to school districts. Publishers may, at any time, make changes that do not affect Texas essential knowledge and skills coverage.

(g) Publishers must agree to supply the previous version of state-adopted instructional materials to school districts that choose to continue using the previous version during the duration of the original contract. This subsection does not apply to online instructional materials.

(h) A publisher of instructional materials may provide alternative formats for use by school districts if:

1. the content is identical to SBOE-approved content;

2. the alternative formats include the identical revisions and updates as the original product; and

3. the cost to the state and school is equal to or less than the cost of the original product.

(i) Alternative formats may be developed and introduced at a time when the subject or grade level is not scheduled in the cycle to be considered for at least two years, in conformance with the procedures for adoption of other state-adopted materials.

(j) Publishers must notify the commissioner of education in writing if they are providing SBOE-approved products in alternative formats.

(k) Publishers are responsible for informing districts of the availability of the alternative formats and for accurate fulfillment of these orders.

(l) The commissioner of education may add alternative formats of SBOE-approved products to the list of available products disseminated to school districts.

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

Filed with the Office of the Secretary of State on June 18, 2012.

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SUBCHAPTER C. LOCAL OPERATIONS

19 TAC §§66.101, 66.104, 66.105, 66.107

The amendments are adopted under the Texas Education Code (TEC), §7.102(c), which authorizes the SBOE to adopt rules required by the TEC, Chapter 31, and §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials.

The amendments implement the Texas Education Code, §7.102(c) and Chapter 31.


(a) According to the schedule of adoption procedures, a publisher shall provide each school district and open-enrollment charter school with information that fully describes instructional materials submitted for adoption. Descriptive information provided to each district or open-enrollment charter school shall be identical.

(b) Upon request by the instructional materials coordinator of a school district or open-enrollment charter school, a publisher shall provide one complete electronic sample in an open file format or closed format of adopted instructional materials. Samples of learning systems and electronic, visual, or auditory media may be provided in demonstration or representative format. Samples of instructional materials provided to school districts shall be labeled, “Sample Copy - Not for Classroom Use.” Samples to schools are not required for materials submitted for midcycle review, as specified in §66.22(f) of this title (relating Midcycle Review and Adoption).

(c) Samples supplied to school districts shall be provided and distributed at the expense of the publisher. No state or local funds shall be expended to purchase, distribute, or ship sample materials. Publishers may make arrangements with school districts or open-enrollment charter schools to retrieve samples after local selections are completed, but the state does not guarantee return of sample instructional materials.


(a) Prior to the beginning of each school year, each school district and open-enrollment charter school shall submit to the State Board of Education (SBOE) and commissioner of education certification that for each subject in the required curriculum under the Texas Education Code, §28.002, other than physical education, and each grade level, the district or charter school provides each student with instructional materials that cover all elements of the essential knowledge and skills adopted by the SBOE. The certification shall be submitted in a format approved by the commissioner of education. Upon request by the commissioner of education, the certification shall include supporting documentation describing the instructional materials on which the certificate is based.

(b) The certifications shall be ratified by local school boards in public, noticed meetings.

(c) The provisions in subsections (a) and (b) of this section are applicable both to state-adopted instructional materials and to non-state-adopted instructional materials.

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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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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Proposal publication date: February 24, 2012
For further information, please call: (512) 475-1497

19 TAC §66.102

The repeal is adopted under the Texas Education Code (TEC), §7.102(c), which authorizes the SBOE to adopt rules required by the TEC, Chapter 31, and §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials.

The repeal implements the Texas Education Code, §7.102(c) and Chapter 31.

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SUBCHAPTER D. SPECIAL INSTRUCTIONAL MATERIALS

19 TAC §§66.121, 66.124

The repeals are adopted under the Texas Education Code (TEC), §7.102(c), which authorizes the SBOE to adopt rules required by the TEC, Chapter 31, and §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials.

The repeals implement the Texas Education Code, §7.102(c) and Chapter 31.

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SUBCHAPTER E. DISPOSITION OF INSTRUCTIONAL MATERIALS

19 TAC §66.131  
The repeal is adopted under the Texas Education Code (TEC), §7.102(c), which authorizes the SBOE to adopt rules required by the TEC, Chapter 31, and §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials.  
The repeal adopts the Texas Education Code, §7.102(c) and Chapter 31.  
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 22. EXAMINING BOARDS
PART 9. TEXAS MEDICAL BOARD
CHAPTER 163. LICENSURE

22 TAC §§163.2, 163.4, 163.5  
The Texas Medical Board (Board) adopts amendments to §§163.2, 163.4 and 163.5, concerning Licensure. Sections 163.2 and 163.4 are adopted without changes to the proposed text as published in the May 4, 2012, issue of the Texas Register (37 TexReg 3327) and will not be republished. Section 163.5 is adopted with nonsubstantive changes to the proposed text as published in the May 4, 2012, issue of the Texas Register (37 TexReg 3327). The text of the rule will be republished.  
The amendment to §163.2, relating to Full Texas Medical License, sets out medical graduation requirements for 5th pathway applicants to be consistent with rules relating to other types of applicants for full licensure.  
The amendment to §163.4, relating to Procedural Rules for Licensure Applicants, provides that if an applicant for licensure has violated §170.002 or Chapter 171, Texas Health and Safety Code, the applicant will be considered ineligible for licensure.  
The amendment to §163.5, relating to Licensure Documentation, amends the clinical clerkship affidavit regarding U.S. clinical clerkships so that language is consistent with the Board’s processes; and provides a remedy for licensure to applicants for licensure who are otherwise ineligible for licensure due to a deficient medical clerkship obtained while in medical school.  
No comments were received regarding adoption of the rules.  
The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.  
The amendments are also authorized by §155.005, Texas Occupations Code.

§163.5. Licensure Documentation.  
(a) On request of board staff, an applicant must appear for a personal interview at the board offices and present original documents to a representative of the board for inspection. Original documents may include, but are not limited to, those listed in subsections (b) - (e) of this section.  
(b) Documentation required of all applicants for licensure.

(1) Birth Certificate/Proof of Age. Each applicant for licensure must provide a copy of a valid passport or birth certificate and translation if necessary to prove that the applicant is at least 21 years of age. In instances where such documentation is not available, the applicant must provide copies of other suitable alternate documentation.

(2) Name Change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant’s name has been changed by naturalization, the applicant should send the original naturalization certificate by certified mail to the board office for inspection.

(3) Examination Scores. Each applicant for licensure must have a certified transcript of grades submitted directly from the appropriate testing service to the board for all examinations accepted by the board for licensure.

(4) Dean’s Certification. Each applicant for licensure must have a certificate of graduation submitted directly from the medical school on a form provided to the applicant by the board. The applicant shall attach a recent photograph, meeting United States Government passport standards, to the form before submitting to the medical school. The school shall have the Dean of the medical school or designated appointee sign the form attesting to the information on the form and placing the school seal over the photograph.

(5) Evaluations. All applicants must provide evaluations completed by an appropriate supervisor, on a form provided by the board, of their professional affiliations for the past five years or since graduation from medical school, whichever is the shorter period.

(6) Medical School Transcript. On request of board staff, an applicant must have his or her medical school submit a transcript of courses taken and grades obtained.

(7) National Practitioner Data Bank/Health Integrity and Protection Data Bank (NPDB-HIPDB). Each applicant must contact the NPDB-HIPDB and have a report of action submitted directly to the board on the applicant’s behalf.

(8) Graduate Training Verification. On request of board staff, an applicant must have any of the training programs in which they have participated in submit verification of a form provided by the
board. The evaluation must show the beginning and ending dates of the program and state that the program was successfully completed.

(9) Specialty Board Certification. Each applicant who has obtained certification by a board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists must submit a copy of the certificate issued by the member showing board certification.

(10) Medical License Verifications. On request of board staff, an applicant must have any state in which he or she has ever been licensed, regardless of the current status of the license, submit directly to this board a letter verifying the status of the license and a description of any sanctions or pending disciplinary matters.

(11) U.S. medical education. Applicants must demonstrate that any medical school education that was completed in the United States in satisfaction of their core basic and clinical science courses as established by the Texas Higher Education Coordinating Board, the Liaison Council on Medical Education, and/or the American Osteopathic Association, and in satisfaction of the 130 weeks of required medical education was accredited by an accrediting body officially recognized by the United States Department of Education as the accrediting body for medical education leading to the doctor of medicine degree or the doctor of osteopathy degree. An applicant who is unable to comply with these requirements may in the alternative demonstrate that the applicant:

(A) received such medical education in a hospital or teaching institution sponsoring or participating in a program of graduate medical education accredited by the Accrediting Council for Graduate Medical Education, the American Osteopathic Association, or approved by the board under §171.4 of this title (relating to Board-Approved Postgraduate Fellowship Training Programs) in the same subject as the medical or osteopathic medical education if the hospital or teaching institution has an agreement with the applicant's school;

(B) is specialty board certified by a board approved by the Bureau of Osteopathic Specialists or the American Board of Medical Specialties; or

(C) for the purpose of remedying a single deficient U.S. clerkship that was obtained while enrolled in medical school, the applicant may subsequently to graduation from medical school, and after submission of an application for licensure:

(i) complete a clerkship in the United States in satisfaction of clinical science courses as established by the Texas Higher Education Coordinating Board, the Liaison Committee on Medical Education, and/or the American Osteopathic Association and in a hospital or teaching institution sponsoring or participating in a program of graduate medical education accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association; or

(ii) re-enroll in a medical school accredited by the Liaison Council on Medical Education, and/or the American Osteopathic Association as a visiting student and satisfactorily complete necessary coursework in the appropriate subject.

(c) Applicants for licensure who are graduates of medical schools outside the United States or Canada must furnish all appropriate documentation listed in this subsection, as well as that listed in subsections (a) and (b) of this section.


(2) Unique Documentation. The board may request documentation unique to an individual unapproved medical school and additional documentation as needed to verify completion of medical education that is substantially equivalent to a Texas medical school education. This may include but is not limited to:

(A) a copy of the applicant's ECFMG file;

(B) a copy of other states' licensing files;

(C) copies of the applicant's clinical clerkship evaluations; and

(D) a copy of the applicant's medical school file.

(3) Clinical Clerkship Affidavit. A form, supplied by the board, to be completed by the applicant, is required listing each clinical clerkship that was completed as part of an applicant's medical education in the United States. The form will require the name of the clerkship, where the clerkship was located (name and location of hospital) and dates of the clerkship.

(4) "Substantially equivalent" documentation. An applicant who is a graduate of a medical school that is located outside the United States and Canada must present satisfactory proof to the board that each medical school attended was substantially equivalent to a Texas medical school at the time of attendance as defined under §163.1(11) of this title. This may include but is not limited to:

(A) a Foreign Educational Credentials Evaluation from the Office of International Education Services of the American Association of Collegiate Registrars and Admissions Officers (AACRAO) or an International Credential Evaluation from the Foreign Credential Service of America (FCSA), or another similar entity as approved by the board;

(B) a board questionnaire, to be completed by the medical school and returned directly to board;

(C) a copy of the medical school's catalog;

(D) verification from the country's educational agency confirming the validity of school and licensure of applicant;

(E) proof of written agreements between the medical school and all hospitals that are not located in the same country as the medical school, where medical education was obtained;

(F) proof that the faculty members of the medical school had written contracts with the school if they taught a course outside the country where the medical school was located;

(G) proof that the medical education courses taught in the United States complied with the higher education laws of the state in which the courses were taught;

(H) proof that the faculty members of the medical school who taught courses in the United States were on the faculty of the program of graduate medical education when the courses were taught; and

(I) proof that all education completed in the United States or Canada was while the applicant was enrolled as a visiting student as evidenced by a letter of verification from the U.S. or Canadian medical school.

(5) Medical Diploma. On request of board staff, an applicant must submit a copy of his or her medical diploma, and translation if necessary.

(d) Applicants may be required to submit other documentation, which may include the following:
(1) Translations. Any document that is in a language other than the English language will need to have a certified translation prepared and a copy of the translation will have to be submitted along with the translated document.

(A) An official translation from the medical school (or appropriate agency) attached to the foreign language transcript or other document is acceptable.

(B) If a foreign document is received without a translation, the board will send the applicant a copy of the document to be translated and returned to the board.

(C) Documents must be translated by a translation agency that is a member of the American Translations Association or a United States college or university official.

(D) The translation must be on the translator’s letterhead, and the translator must verify that it is a "true word for word translation" to the best of his/her knowledge, and that he/she is fluent in the language translated, and is qualified to translate the document.

(E) The translation must be signed in the presence of a notary public and then notarized. The translator’s name must be printed below his/her signature. The notary public must use this phrase: "Subscribed and Sworn to this ________ day of ________, 20__.” The notary must then sign and date the translation, and affix his/her Notary Seal to the document.

(2) Arrest Records. If an applicant has ever been arrested, a copy of the arrest and arrest disposition need to be requested from the arresting authority and said authority must submit copies directly to this board.

(3) Malpractice. If an applicant has ever been named in a malpractice claim filed with any medical liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must do the following:

(A) have each medical liability carrier complete a form furnished by the board regarding each claim filed against the applicant’s insurance;

(B) for each claim that becomes a malpractice suit, have the attorney representing the applicant in each suit submit a letter directly to the board explaining the allegation, dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit, and if any money was paid, the amount of the settlement. The letter should include supporting court records. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided; and

(C) provide a statement, composed by the applicant, explaining the circumstances pertaining to patient care in defense of the allegations.

(4) Inpatient Treatment for Alcohol/Substance Disorder or Physical or Mental Illness. Each applicant who has been admitted to an inpatient facility within the last five years for the treatment of alcohol/substance disorder or mental illness (recurrent or severe major depressive disorder, bipolar disorder, schizophrenia, schizoaffective disorder, or any severe personality disorder), or a physical illness that did or could have impaired the applicant's ability to practice medicine, shall submit documentation to include items listed in subparagraphs (A) - (D) of this paragraph. An inpatient facility shall include a hospital, ambulatory surgical center, nursing home, and rehabilitation facility.

(A) an applicant’s statement explaining the circumstances of the hospitalization;

(B) all records, submitted directly from the inpatient facility;

(C) a statement from the applicant's treating physician/psychiatrist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(D) a copy of any contracts signed with any licensing authority or medical society or impaired physician’s committee.

(5) Outpatient Treatment for Alcohol/Substance Disorder or Mental Illness. Each applicant who has been treated on an outpatient basis within the last five years for alcohol/substance disorder or mental illness (recurrent or severe major depressive disorder, bipolar disorder, schizophrenia, schizoaffective disorder, or any severe personality disorder), or a physical illness that did or could have impaired the applicant's ability to practice medicine, shall submit documentation to include, but not limited to:

(A) an applicant's statement explaining the circumstances of the outpatient treatment;

(B) a statement from the applicant's treating physician/psychiatrist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(C) a copy of any contracts signed with any licensing authority or medical society or impaired physician’s committee.

(6) DD214. A copy of the DD214, indicating separation from any branch of the United States military.

(7) Premedical School Transcript. Applicants, upon request, may be required to submit a copy of the record of their undergraduate education. Transcripts must show courses taken and grades obtained. If determined that the documentation submitted by the applicant is not sufficient to show proof of the completion of 60 semester hours of college courses other than in medical school or education required for country of graduation, the applicant may be requested to contact the Office of Admissions at The University of Texas at Austin for course work verification.

(8) Fingerprint Card. Upon request, applicants must complete a fingerprint card and return to the board as part of the application.

(9) Additional Documentation. Additional documentation as is deemed necessary to facilitate the investigation of any application for medical licensure.

(e) The board may, in unusual circumstances, allow substitute documents where proof of exhaustive efforts on the applicant’s part to secure the required documents is presented. These exceptions are reviewed by the board’s executive director on a case-by-case basis.

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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Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: July 4, 2012
Proposal publication date: May 4, 2012
For further information, please call: (512) 305-7016

CHAPTER 166. PHYSICIAN REGISTRATION
22 TAC §166.1, §166.3
The Texas Medical Board (Board) adopts amendments to §166.1, concerning Physician Registration, and §166.3, concerning Retired Physician Exception, without changes to the proposed text as published in the May 4, 2012, issue of the Texas Register (37 TexReg 3329) and will not be republished.

The amendment to §166.1 provides that a physician will not be eligible for a registration permit if the physician has violated §170.002 or Chapter 171, Texas Health and Safety Code, consistent with HB15 that was passed during the 82nd Legislative Session.

The amendment to §166.3 provides that in order for a physician to return to active status from retired status, the physician may have to prove competency or otherwise remEDIATE any deficiencies in ways consistent with §163.11 of the Board's rules related to the active practice of medicine.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §156.001, Texas Occupations 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.

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CHAPTER 172. TEMPORARY AND LIMITED LICENSES
The Texas Medical Board (Board) adopts amendments to §§172.8, 172.15, and 172.16, concerning Temporary and Limited Licenses, without changes to the proposed text as published in the May 4, 2012, issue of the Texas Register (37 TexReg 3330) and will not be republished.

The amendment to §172.8, relating to Faculty Temporary License, provides that applicants for Faculty Temporary Licenses (FTLs) shall be determined ineligible for FTLs based on the same reasons for ineligibility for full licensure.

The amendment to §172.15, relating to Public Health License, provides that any clinical medicine performed under public health license may not count toward active practice requirements for full licensure.

The amendment to §172.16, relating to Provisional Licenses for Medically Underserved Areas, provides that in addition to other reasons already provided by rule, a provisional license will be terminated upon determination of statutory ineligibility by the Executive Director.

No comments were received regarding adoption of the amendments.

SUBCHAPTER B. TEMPORARY LICENSES
22 TAC §172.8
The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §155.101 and §155.104, Texas Occupations 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.

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SUBCHAPTER C. LIMITED LICENSES
22 TAC §172.15, §172.16
The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §155.101 and §155.104, Texas Occupations 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.

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CHAPTER 177. BUSINESS ORGANIZATIONS
SUBCHAPTER B. NON-PROFIT HEALTH ORGANIZATIONS

22 TAC §177.5

The Texas Medical Board (Board) adopts amendments to §177.5, concerning Special Requirements for 162.001(b) Health Organizations, without changes to the proposed text as published in the May 4, 2012, issue of the Texas Register (37 TexReg 3332) and will not be republished.

The amendment provides changes consistent with SB1661 passed during the 82nd Regular Session. Changes include requiring non-profit health organizations to adopt and enforce policies to ensure that physicians employed by the organization exercise independent medical judgment when providing care to patients.

Comments were received in support of the rule from the Texas Society of Anesthesiologists.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §162.0022, Texas Occupations 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.

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CHAPTER 183. ACUPUNCTURE

22 TAC §183.4

The Texas State Board of Acupuncture Examiners (Board) adopts amendments to §183.4, concerning Licensure, without changes to the proposed text as published in the March 16, 2012, issue of the Texas Register (37 TexReg 1886) and will not be republished.

The amendment provides that applicants for licensure must demonstrate active practice within either of the two years prior to date of application and that the Board can issue temporary licenses to applicants to remedy active practice deficiencies.

No comments were received regarding adoption of the amendments.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §205.101, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of acupuncture in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by Texas Occupations Code, §205.202.

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 190. DISCIPLINARY GUIDELINES

SUBCHAPTER B. VIOLATION GUIDELINES

22 TAC §190.8

The Texas Medical Board (Board) adopts amendments to §190.8, concerning Violation Guidelines, without changes to the proposed text as published in the May 4, 2012, issue of the Texas Register (37 TexReg 3333) and will not be republished.

The amendment adds that the Board will take disciplinary action if the physician is in violation of §170.002 or Chapter 171, Texas Health and Safety Code.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendments are also authorized by §170.002 and Chapter 171, Health and Safety 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.

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CHAPTER 198. UNLICENSED PRACTICE

22 TAC §§198.1 - 198.3
The Texas Medical Board (Board) adopts new §198.1, concerning Purpose, §198.2, concerning Definitions, and new §198.3, concerning Practice Guidelines for the Use of Investigational Agents, without changes to the proposed text as published in the March 9, 2012, issue of the Texas Register (37 TexReg 1647) and will not be republished.

The amendments to §198.1, relating to Purpose, establishes the purpose of the chapter to give physicians a reasonable and responsible degree of latitude in the use of investigational agents.

The Board has determined that as a result of enforcing this section physicians will have a certain level of discretion in the use of investigational agents while balancing that discretion with certain requirements on physicians to ensure public safety.

The amendments to §198.2, defines investigational agents, as well as exceptions to the definition.

The Board has determined that this section sets out the scope of what the Board considers to be an investigational agent, including medications, biological products, devices, diagnostic products and treatment regimens not approved by the Food and Drug Administration. In addition, the rule explains what is not considered to be an investigational agent.

The amendments to §198.3 establishes standards for the use of investigational agents, including the use of approved protocols, compliance with federal laws, and standards for patient assessments, treatment plans, and medical records.

The Board has determined that this section establishes standards for the use of investigational agents that will protect the public who take part in studies or treatments where investigational agents are used.

The Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on July 27, 2011. The comments were incorporated into the proposed rules.

The Board received public written and oral comments that were received by the Board at the public hearing held on April 13, 2012.

§198.1
The Board received comments regarding §198.1 from Representative Ralph Sheffield, Dr. Stanley Jones, and several individuals.

COMMENT NUMBER 1
Representative Ralph Sheffield commented that the proposed rules over-regulate laws currently in place by the federal government. The proposed rules will slow medical progress and will cause Texas research facilities and hospitals to lose investment dollars.

The Board disagrees with this comment. The Board's intent is not to "over-regulate" or supersed current federal regulations, and the Board believes the current regulations will not impede medical progress or impact research in Texas. Specifically, the Board has explicitly exempted research that meets existing regulatory requirements from being considered "investigational" under this section. Leaders from the research community participated in the stakeholders' meeting and their recommendations were incorporated. Additional public comments from active researchers were received in support of the proposed rules.

COMMENT NUMBER 2

Dr. Stanley Jones commented that the rules should be regularly reviewed, at least annually, since the field of stem cell research is constantly evolving, the TMB rules adopted may soon become out-of-date. Further, adult autologous mesenchymal stem cells do not pose the same risk as stem cells that have been combined with therapeutic agents, not autologous, or involve modified cells. The Board should not lump all stem cell usage together, and should review the evidence of relative safety risks of different types of therapies after a reasonable time to determine if requirements relating to Institutional Review Boards is still necessary.

The Board determined that the provisions of the Board's rules in Chapter 198 apply to investigational agents generally, rather than to specific subtypes of agents because, as the commentator points out, this is a technology that is expected to continue to evolve rapidly and raise novel regulatory issues. The Board fully intends to continue to review these rules regularly to respond to new developments relating to these technologies.

COMMENT NUMBER 3

Several individuals commented that they opposed any rule that placed further restrictions on the use of adult autologous stem cells.

The Board disagrees with this comment. The Board asserts that the rules provide important protections for the public while at the same time allowing for continued use of adult autologous stem cells under appropriate conditions.

For these reasons, the Board does not believe that any changes should be made to this proposed rule as published. The Board has adopted the rule as published, without changes.

§198.2
The Board received comments regarding §198.2 from Baylor Health; Celltex Therapeutics; Dr. Leigh Turner, Center for Bioethics at the University of Minnesota; and several individuals.

COMMENT NUMBER 1
Baylor Health commented that §198.2(a) should be amended to exclude language that provides exemptions for investigational agents that are used for off-label purposes.

The Board recognizes that off-label use is a fact of modern medical practice today, and such use will be no different with investigational agents than with any other drug or device. That said, given the general existence of this practice, there is no reason to specifically address it in the rule at this time.

COMMENT NUMBER 2
Celltex Therapeutics commented that §198.2(3) be amended so that it reads as follows: (3) products processed or manufactured as human cell, tissue or cellular-or-tissue-based product ("HCT/P") pursuant to Sections 351 OR 361 of the Public Health Service Act ("PHSA") (42 U.S.C. 264). According to Celltex, this change would have Texas regulations of HCT/Ps consistent with federal law.

The Board disagrees with this comment. The Board intends for this exemption to apply all products that are processed or manufactured pursuant to Section 351 of the PHSA as well as to all products that are processed or manufactured pursuant to Section 361 of the PHSA. The use of the term "and" was intended to clarify that these products are exempt regardless of which of the two sections apply.
COMMENT NUMBER 3

Dr. Leigh Turner commented that Investigational Agents are used in the context of clinical studies involving human research participants and should not be described as "therapies" falling within "the practice of medicine". The language used in Chapter 198.1 is problematic because it fails to make key distinctions between "research" and "therapies" or "treatments." Therapies, in both the practice of medicine and common parlance, can be taken to mean established treatments rather than experimental, clinically unproven interventions requiring oversight as investigational research. Likewise, the phrase "use of investigational agents constitutes the practice of medicine" could be taken to mean that use of investigational agents falls within established medical practice or existing standard of medical care. However, the language of "investigational agent" combined with reference to Institutional Review Boards and research elsewhere in Chapter 198 highlights the importance of emphasizing that provision of investigational agents falls within the scope of medical research rather than the existing standard of medical care in which physicians can exercise "a reasonable and responsible degree of latitude" in offering established treatments to their patients. This phrase points to a common misunderstanding in which research subjects enroll in clinical studies but mistakenly assume that they will experience personal therapeutic benefit as a result of participating in clinical research. There are many studies (particularly Phase I studies) where investigational agents are tested for safety rather than efficacy and research participants should have no expectation of individual therapeutic benefit. In other studies some research participants receive placebos rather than investigational agents.

The Board disagrees with this comment. The Board acknowledges that many different inferences may be drawn from specific terms used depending on the unique perspectives of the reader no matter which terms are used. No other commentators indicated that they made similar inferences as this commentator did, so it is unclear to the Board whether the use of slightly different terms would provide additional clarity. On the other hand, the Board believes that the need for patient protections is urgent, such that failure to implement these rules would lead to far greater harm to patients than further delaying patient protections unnecessarily. Again, the Board intends to review these rules regularly and revise them as needed.

§198.3

The Board received comments regarding §198.3 from Baylor Health, Celltex Therapeutics, Dr. Leigh Turner, Dr. Stanley Jones, and several individuals.

COMMENT NUMBER 1

Baylor Health commented that §198.3(a) should be amended as follows, "Use of stem cells in humans shall be considered investigational until such time as they are approved by the FDA." The suggested change would remove the language, "unless they are used in the conduct of an FDA-approved protocol or". The proposed change is suggested because therapies used in the conduct of an FDA-approved protocol are investigational.

The Board disagrees with this comment. These rules are intended to prevent the inappropriate use of stem cells through patient protections including FDA and IRB oversight. At the stakeholders' meeting, there were concerns from the research/academic community that these rules might impair research efforts if they could be construed to apply to unapproved products that are being studied within appropriate protocols. Therefore, the Board specifically included this language to avoid confusion with regard to legitimate research uses of stem cells.

COMMENT NUMBER 2

Celltex Therapeutics commented that §198.3(a) should be amended as follows:

(a) Administering or providing investigational agents constitutes the practice of medicine and, therefore, must be performed under the direction of a licensed physician who is responsible for compliance with the Medical Practice Act, Texas Occupations Code, Title 3, Subtitle B and applicable Board Rules. Use of stem cells in humans shall be considered investigational unless they are adult stem cells that meet requirements of section 361 of the Public Health Services Act (42 U.S.C.) and its regulations, used in the conduct of an FDA-approved protocol or until such time as they are approved by the FDA. Physicians using investigational agents are obligated to maintain their ethical and professional responsibilities, including maintaining a distinction between their roles as physician-investigators and treating physicians, as required by applicable federal law.

Celltex asserts that this change will make Texas regulations of HCT/Ps consistent with federal law.

The Board disagrees with this comment. The Board feels that the rules, as proposed, are consistent with existing federal regulations and is concerned that the proposed amendment may render the use of investigational adult stem cells a non-medical practice exempt from appropriate medical and regulatory oversight.

COMMENT NUMBER 4

Celltex Therapeutics and Dr. Stanley Jones, commented that §198.3(d) should be amended as follows, removing the words, "a principal investigator":

(d) Physicians engaged in administering or providing of investigational agents shall be expected to conform to the following standards:

(1) The administration or provision of investigational agents should be part of a systematic program competently designed, under accepted standards of scientific research, to evaluate the efficacy and safety of the investigational agents, which shall include:

(A) oversight by the sponsor (or its agent), whose specific responsibility is to ensure that subjects are enrolled through appropriate inclusion and exclusion criteria;

Celltex provides stem cell banking and other services, and as a sponsor or such services is responsible for monitoring investigator compliance with IRB-approved protocol(s). Federal law requires the sponsor and/or its agent to conduct such oversight, and therefore it is not the role of the principal investigator to inspect medical records of the subjects participating in the offices of other investigators in a study, which is what the TMB proposed rules seem to require. Therefore, since federal law places the burden of oversight on the sponsor, Celltex and Dr. Jones assert that the proposed rules should do the same to be consistent.

The Board disagrees with this comment. The Texas Medical Board has authority to regulate physicians and their behaviors, whereas the U.S. Food & Drug Administration regulates manufacturers/distributors and their products. The Board envisions the role of "principal investigator" being filled by a physician who assumes the duty of ensuring that appropriate safeguards are in...
place to protect patients, and is concerned that the use of the term "sponsor" would expand the rule inappropriately to apply to non-physicians (i.e., beyond the Board's authority).

COMMENT NUMBER 5

Dr. Leigh Turner commented that defining and describing "stem cells" as "investigational agents" falling within the practice of medicine undermines protections for research participants and patients. Chapter 198's classification of "stem cells" as "investigational agents" that are also "therapies" conveys the impression that physicians offering such "therapies" as part of "the practice of medicine" need not submit to the FDA Investigational New Drug (IND) applications before administering stem cells to their patients. Submission of study protocols to Institutional Review Boards meeting specified criteria is apparently sufficient. However, Chapter 198.2 states, "An investigational agent shall not include" (3) products processed or manufactured as human cell, tissue or cellular-or-tissue-based product ("HCT/P") pursuant to Sections 351 and 361 of the Public Health Service Act ("PHSA") (42 U.S.C. 264); nor (4) a drug, device or biologic pursuant to the Federal Food, Drug and Cosmetic Act ("FDCA"). Taken in its entirety, it is unclear exactly how Chapter 198 is supposed to regulate different types of stem cells and procedures involving administration of adult stem cells. When referring to administration of stem cells, Chapter 198 does not clearly specify what types of stem cells are "investigational agents" that--despite their investigational status--do not require submission of Investigational New Drug applications to the FDA. Chapter 198 uses the phrase "stem cells" but does not differentiate among various types of stem cells. This failure to make distinctions and specify what types of stem cells can be administered to research subjects without first submitting IND applications to the FDA risks leaving physicians, patients, researchers, Institutional Review Board members, and administrators at universities and hospitals understandably confused about what types of stem cells can be administered as "therapies" that are part of "the practice of medicine."

The Board disagrees with this comment. The Board does not intend for its rule to allow circumvention of existing FDA and IRB oversight of the use of investigational agents, and expressly requires such use. The Board's intent is to protect patients from inappropriate use of investigational agents. However, the Board will also seek clarification to ensure that the proposed amendment (changing the term "or" to "and") does not inadvertently add an additional layer of regulation that delays research, as prior comments from the research community had indicated.

COMMENT NUMBER 6

Dr. Leigh Turner, commented that most interventions involving administration of stem cells require submitting an Investigational New Drug Application to the FDA and having study protocols approved by Institutional Review Boards. Comments made by several members of the Adult Stem Cell Research/Treatments Stakeholder Workgroup as well as correspondence sent to various individuals to the Texas Medical Board suggest that one major reason for classifying "stem cells" as investigational agents is to permit physicians to administer to patients adult autologous stem cells without first having to submit to the FDA Investigational New Drug applications. According to §198.3(b), "Prior to administering or providing of investigational agents, physicians must have their proposed use either included in an FDA/NIH approved protocol/study or approved by an IRB." This language is misleading. If researchers wish to administer an Investigational New Drug in the context of a clinical trial, there are two major regulatory pathways that must be navigated. Researchers are not free to select whichever option they prefer. First, researchers must submit to the FDA an Investigational New Drug (IND) application. The FDA then has 30 days to decide whether to put a hold on the application. Second, research involving investigational agents must be reviewed, evaluated, and approved by an Institutional Review Board. By not being precise about the extent to which "investigational agents" are similar to or different from what the FDA describes as "Investigational New Drugs" and by asserting that researchers can submit to the FDA/NIH or an IRB, it appears that Chapter 198, if approved, would dramatically reduce protections for research participants. Serious consequences for researchers and research institutions that fail to submit IND applications to the FDA when they are required by federal regulations to take this action. Upon discovery of such violations by the FDA, the Department of Health & Human Services' Office for Human Research Protections, and/or the National Institutes of Health, researchers at medical centers and universities and tissue banks, etc. are subject to additional disciplinary measures, and the Office for Human Research Protections could halt clinical studies at institutions where researchers fail to conduct research in a manner that conforms to federal regulations.

The Board disagrees with this comment. The Board does not intend for its rule to allow circumvention of existing FDA and IRB oversight of the use of investigational agents, and expressly requires such use. The Board's intent is to protect patients from inappropriate use of investigational agents. However, the Board will also seek clarification to ensure that the proposed amendment (changing the term "or" to "and") does not inadvertently add an additional layer of regulation that delays research, as prior comments from the research community had indicated.

COMMENT NUMBER 7

Dr. Leigh Turner commented that Chapter 198 fails to provide clear guidance concerning regulation of adult stem cells at a time when numerous businesses in Texas are marketing stem cells. The way some "stem cell" businesses market their products as stem cells, stem cell banks, stem cells are obtained from adipose tissue, the stem cells are then cultured and expanded over a 3-4 week period then subsequently transported to clinics in Texas and administered to patients. What occurs during this lengthy period based on public disclosure by certain labs is that the processing could include expansion using growth factors and reagents, centrifuging, placement in culture media, exposure to enzymes, cryopreservation, and additional steps. Given the amount of time the stem cells outside the body, and the numerous steps that presumably are required to isolate, culture, process, and cryogenically bank stem cells, there is reason to question whether the cells are "minimally processed" and can be administered to patients without first submitting an Investigational New Drug application to the FDA. Chapter 198 needs to be forthright about how the Texas Medical Board intends to regulate companies that directly administer adult stem cells to patients or process and bank stem cells before providing them to physicians who then administer them to patients. In particular, Chapter 198 needs to clearly state how the guidelines are supposed to regulate procedures involving more than "minimally manipulated" stem cells. According to federal regulations, prior to administration of such cells it is necessary to first submit IND applications to the FDA and establish whether or not the FDA places a hold on the application.

37 TexReg 4932 June 29, 2012 Texas Register
The Board disagrees with this comment. The definition of "minimally processed" (or more accurately, "minimally manipulated") has been set forth by FDA at 21 CFR 1271.3(f). The Board does not intend to modify or override FDA regulations including definitions for such agents, so the rules do not specifically re-define such products and will not affect existing FDA definitions.

Again, the Board intends to continue to review its rules and make any necessary amendments, so would welcome any comments with suggestions that provide clarification to all readers.

COMMENT NUMBER 8

Dr. Leigh Turner commented that the guidelines must clearly state that research subjects should not pay for participating in clinical studies. Chapter 198 addresses administration of investigational agents but does not specify how the Texas Medical Board proposes to address circumstances in which researchers seek payment from research participants. There are numerous reasons why research participants should not pay for participating in studies in which they receive investigational agents. In the context of Phase I studies, agents are tested primarily for safety. Research participants in Phase I studies are informed that they should expect no personal therapeutic benefit as a result of participating in such studies. In later phase clinical trials, investigational agents are often tested against placebos. Research participants are randomly distributed to different arms of studies and are "blinded" as to whether they receive investigational agents or placebos. In randomized and blinded clinical studies involving placebos, research participants do not know whether they will receive placebos or investigational agents, and whether the investigational agent is superior to placebo is not yet established. Research participants should not have to pay for participating in such studies. The Texas Medical Board should take steps to ensure that individuals who have already paid to participate in clinical studies involving administration of adult stem cells are reimbursed.

The Board disagrees with this comment. The Board's regulations are intended to implement patient protections by ensuring adequate oversight of the administration of investigational agents by appropriate authorities, such as IRBs. Whether a patient chooses to pay a fee is beyond the regulatory authority the Board.

COMMENT NUMBER 9

Dr. Leigh Turner commented that the guidelines must clearly state that research protocols involving administration of adult stem cells cannot be reviewed and approved by private, for-profit Institutional Review Boards. One significant problem with appearing to provide the option of submitting Investigational New Drug applications to the FDA or submitting study protocols for review to IRBs (if this framework is what the guidelines intend to promote) is that quality of IRB review is variable. Furthermore, some IRBs can experience financial pressures to approve research protocols if they wish to remain in business. Chapter 198 must directly address whether or not researchers can submit clinical studies involving use of investigational agents to private, for-profit IRBs. If Chapter 198 permits submission of clinical studies to private, for-profit Institutional Review Boards there is risk that researchers will engage in "IRB shopping." What this means is that when researchers encounter barriers to having their clinical studies approved by IRBs they simply continue searching for an IRB until they find one that approves whatever studies they wish to conduct.

The Board disagrees with this comment. The Board believes that the rules implement an important patient protection through the requirement of IRB oversight. The performance of the IRB is a separate issue and will be addressed separately through appropriate channels if there is evidence of failure to meet accepted standards of care for IRBs. As an analogy, the Board does not feel that the potential for IRB "malpractice" or "IRB shopping" eliminates the need for patient protections, just as the potential for medical malpractice or "doctor shopping" does not eliminate the need for regulation of the practice of pain medicine.

For these reasons, the Board does not believe that any changes should be made to this proposed rule as published. The Board has adopted the amendments to this section as published, without changes.

The new rules are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Board to adopt rules and bylaws as necessary to govern its own proceedings, perform its duties, regulate the practice of medicine in this state, enforce this subtitle, and establish rules related to licensure.

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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Mari Robinson, J.D.
Executive Director
Texas Medical Board
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Proposal publication date: March 9, 2012
For further information, please call: (512) 305-7016

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.1

The Texas Funeral Service Commission (Commission) adopts an amendment to §203.1, concerning Definitions, with changes to the proposed text as published in the January 6, 2012, issue of the Texas Register (37 TexReg 43).

The amendment is adopted in order to use the term broadcast as synonym for advertising. A new paragraph is added as (1) and the numerical sequence of definitions is changed.

Following are the public comments received and corresponding commission response:

COMMENT: The Commission received comments from the Texas Funeral Directors Association concerning §203.1(1) "Advertise--To make publicly and generally known; to announce publicly especially by a printed notice or a broadcast", and §203.1(8) "Cremation Society--A resource for sharing a common interest of learning about cremation and providing consumers the assistance to locate cremation providers in their local area.
or outside their local area”. The Texas Funeral Directors Association does not support the inclusion of a definition of "Advertise" in §203.1(1). The Texas Funeral Directors has conducted a search of the Texas Statutes and Texas Administrative Code and can find no other occurrence of a definition of "Advertise". The Texas Funeral Directors Association finds that attempting to define such a term in law or by rule will capture unintended forms of communication and, at the same time, will be too narrow to capture some intended items. Furthermore, The Texas Funeral Directors does not find the proposed definition of "Advertise" to provide any additional clarity or transparency to the law. The Texas Funeral Directors Association has found, instead, several sections throughout the Texas Statutes that attempt to identify actions that would be considered false advertising. The Occupations Code in §651.453 contains language on "unethical advertising" and defines it as "an advertising statement of a character that misleads or deceives the public". Further §17.12, Texas Business and Commerce Code, applies to all persons doing business in Texas and defines Deceptive Advertising. The Texas Funeral Directors Association finds that adding the proposed definition of "Advertise" is not necessary and will serve only to add confusion.

The Texas Funeral Directors Association sought to clarify the reason for the proposed definition of cremation society and the attendant language relation to how they can advertise. It is difficult to track such organizations and a simple name change could result in their falling out of the scope of this rule. The Funeral Consumer Alliance seems to oppose this definition as well, since they might be included in such a definition.

The Commission also received comments from Mr. Jim Bates, Director, Funeral Consumer Alliance of Texas concerning §203.1(8) "Cremation Society--A resource for sharing a common interest of learning about cremation and providing consumers the assistance to locate cremation providers in their local area or outside their local area". Mr. Bates feels this proposed definition defines part of what the Funeral Consumer Alliance does for consumers as a 501c3 entity; educating consumers about cremation and other death care related topics. Funeral Consumer Alliance is not under the regulation of the Texas Funeral Service Commission.

COMMISSION RESPONSE: The Commission will change §203.1(1) to read as follows: "Advertising--The act of making publicly and generally known: the act of announcing publicly especially by a printed notice or a broadcast."

The Commission disagrees with striking §203.1(8) "Cremation Society--A resource for sharing a common interest of learning about cremation and providing consumers the assistance to locate cremation providers in their local area or outside their local area." The commission believes adding both definitions, Advertising and Cremation Society, will add clarity to existing and industry related commonly used terms.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§203.1 Definitions.

The following words and terms, when used in this chapter, shall have the following meanings.

(1) Advertising--The act of making publicly and generally known: the act of announcing publicly especially by a printed notice or a broadcast.

(2) Alternative container--An unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed-wood, composition materials (with or without an outside covering) or like materials.

(3) At-need--The time of need of funeral services or merchandise when a human being has become deceased.

(4) Cash Advance item--Any item of service or merchandise described to a purchaser as a "cash advance", "accommodation", "cash disbursement" or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers, musicians or singers; nurses; obituary notices; gratuities and death certificates.

(5) Casket--A rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.

(6) Commission--The Texas Funeral Service Commission.

(7) Cremation--A heating process which incinerates human remains.

(8) Cremation Society--A resource for sharing a common interest of learning about cremation and providing consumers the assistance to locate cremation providers in their local area or outside their local area.

(9) Direct Cremation--Disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.

(10) Funeral ceremony--A service commemorating the deceased with the body present.

(11) Funeral goods--Goods which are sold or offered for sale directly to the public for use in connection with funeral services. Also referred to as funeral merchandise.

(12) Funeral provider--Any person, partnership or corporation that sells or offers to sell funeral merchandise and funeral services to the public at need.

(13) Graveside service--A funeral ceremony with the body present held at the burial site.

(14) Holding the body hostage--Refusing for any reason to transfer or allow the transfer of a dead human body to the person responsible for making arrangements for final disposition.

(15) Immediate burial--Disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service.

(16) Memorial service--A ceremony commemorating the deceased without the body present.

(17) Morgue--A place where bodies of unidentified persons or those who have died of violence or unknown causes are kept until release for burial or other lawful disposition.

(18) Person--Any individual, partnership, corporation, association, government or governmental subdivision or agency or other entity.
(19) Pre-need--Prearranged or prepaid funeral or cemetery services or funeral merchandise, including an alternative container, casket, or outer burial container. The term does not include a grave, marker, monument, tombstone, crypt, niche, plot, or lawn crypt unless it is sold in contemplation of trade for funeral services or funeral merchandise as defined by Chapter 154 Texas Finance Code.

(20) Refrigeration of body--Maintenance of an unembalmed dead human body at a temperature of 34-40 degrees Fahrenheit.

(21) Unreasonable Time--The retention of excess funds for a period that exceeds ten days from the time the funds were received by the funeral establishment or its agent.

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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Kevin Heyburn
Executive Director
Texas Funeral Service Commission
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Proposal publication date: January 6, 2012
For further information, please call: (512) 936-2469

22 TAC §203.7

The Texas Funeral Service Commission (Commission) adopts an amendment to §203.7, concerning Price Disclosure, with changes to the proposed text as published in the January 6, 2012, issue of the Texas Register (37 TexReg 44).

An amendment adding §203.7(b)(5)(B)(xiv) is adopted in accordance with §651.405(a)(9), Texas Occupations Code requiring that the list of the retail price of items or services provided by a funeral establishment must include the price to be charged by the funeral provider for filing a claim seeking life insurance proceeds on behalf of beneficiaries. An amendment adding §203.7(b)(5)(C)(iv) and (v) are also adopted. In general, this amendment will require that a funeral provider inform a consumer that there will be a cost associated with the use of a third party to file a claim seeking expedited receipt of life insurance proceeds. Further, an amendment adding §203.7(b)(8) is adopted. This amendment will require that the funeral provider list separately in the cash advance portion of the statement of goods and services the additional cost of adding a graphically illustrated logo to the obituary.

Following are summaries of public comments received and Commission responses to those comments:

The Commission received comments from the Texas Funeral Directors Association (TFDA) stating it agrees that funeral establishments should not pass on any additional costs incurred for including a funeral establishment's logo in an obituary placed in a newspaper, unless the funeral establishment discloses to the consumer that there is a cost. However, the TFDA notes that it believes the scope of the problem with respect to undisclosed charging for logos in obituaries has been exaggerated.

The Texas Funeral Directors Association does not agree that language needs to be added to the Rule on Price Disclosure or Cash Advance Items with respect to the cost of filing a claim seeking life insurance proceeds on behalf of beneficiaries saying that both rules and the law are clear that any additional costs must be revealed to the family.

Additionally, Texas Funeral Directors Association questions whether the Commission has statutory authority to adopt such a provision. Although Senate Bill (SB) 864, does give the Commission statutory authority to require that the General Price List contain the funeral home's fee for filing a claim seeking life insurance proceeds on behalf of the beneficiaries, the Commission's recent interpretation that SB 864 requires a funeral home to also list a third party provider's price is too broad and interpretation and unsupported by even the broadest reading of SB 864. The Funeral Rule requires that a funeral provider "Give a printed or typewritten price list for retention to persons who inquire in person about the funeral goods, funeral services or prices of funeral goods or services offered by the funeral provider." Nowhere within the Funeral Rule or SB 864 is it even remotely suggested that a funeral provider include third parties' fees on the funeral provider's General Price List. The Commission has modified the language of the proposed additions to §203.7 to make it clear that only the fact that there will be fees associated with the use of a third party need be disclosed. The Commission agrees that a funeral provider should not be responsible for disclosing the price to be charged by a third party for such services when the funeral provider may or may not know such costs.

The Commission also received comments from Mr. Jim Bates, Director at Funeral Consumers Alliance of Texas (Alliance), concerning §203.7(b)(8). Mr. Bates believes that the exact amount should be disclosed to the consumer for the cost of the logo. Mr. Bates believes an insertion of business logos within personal obituaries is viewed as an insidious practice promulgated by industry that has become widespread throughout the state. He notes his belief, however, that some newspapers do not insert logos within obituaries out of respect for the family, and the newspapers' interpretation of the Federal Trade Commission (FTC) Funeral Rule and Texas statutes. Mr. Bates states his belief that these newspapers also forego the advertising profits gained by the insertion of funeral establishment logos out of respect for the families affected by such a business practice Funeral Consumers Alliance's preference is to ban all logo advertising from all obituaries in Texas.

Mr. Bates states that although it has no empirical evidence, the Alliance believes that a "reasonable man" test would conclude that insertion of a logo within an obituary is a form of advertising. Mr. Bates suggests the following language be added to §203.7(b)(8) as follows: "The cost of a funeral establishment logo within an obituary notice shall be listed as a separate item within the cash advance portion of the statement of goods and services. The consumer will acknowledge in writing that it has approved the insertion of funeral establishment advertising within the obituary, and has voluntarily paid for such advertising".

The Alliance believes that funeral establishment logos shall not be allowed within any personal obituary in any form of media. If the Commission decides to allow logos within obituaries, additional consumer protection is needed to comply with the Federal Trade Commission Funeral Rule of full price disclosure of obituaries, which are case advance items. (Reference: FTC Part 453.3(i) "Represent that the price charged for a cash advance item is the same as the cost to the funeral provider for the item when such is not the case. (ii) Fail to disclose that the price being charged for a cash advance item is not the same as the cost to the funeral provider when such is not the case.")
The Commission believes that the cost of including a graphically illustrated logo should be separately disclosed and has modified the language of its addition of §203.7(b)(8) in consideration of the comments of both the Alliance and TFDA.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§203.7. Price Disclosure.

(a) Unfair or deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies, including at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, urns, immediate burials, or direct cremations, to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements in subsection (b) of this section is not engaged in the unfair or deceptive acts or practices defined here.

(b) Preventive requirements. To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §203.9(b)(1) of this title (relating to Other required purchases of funeral goods or funeral services), funeral providers must:

(1) Telephone price disclosure. Tell persons who ask by telephone about the funeral provider's offerings or prices any accurate information from the price lists described in paragraphs (2) - (5) of this subsection and any other readily available information that reasonably answers the question.

(2) Casket price list.

(A) Give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider must offer the list upon beginning discussion of, but in any event before showing caskets. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make a casket price list available if the funeral providers place on the general price list, specified in paragraph (5) of this subsection, the information required by this subsection. The description of an outer burial container under this section must, at a minimum, include the following specifications:

(i) The type of material that is predominantly used in the construction of the merchandise, i.e.:  
(1) concrete, specifying type of construction, e.g., liner, box, or vault;  
(II) steel, identified as stainless or by gauge, e.g., 12 gauge (or described as galvanized of a particular gauge);  
(III) wood;  
(IV) bronze or copper, described by weight or gauge, e.g., 32 oz. or 18 gauge; or  
(V) other specifically named material; and

(ii) The type of sealing feature, e.g., sealer, non-sealer, gasketed, or non-gasketed, if specified on the funeral provider's general price list; and

(iii) The material lining the interior of the casket, e.g., crepe, velvet, satin, twill or silk.

(C) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as a "casket price list."

(3) Outer burial container price list.

(A) Give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event before showing the containers. The list must contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in paragraph (5) of this subsection, the information required by this subsection. The description of an outer burial container under this section must, at a minimum, include the following specifications:

(i) The type of material that is predominantly used in the construction of the merchandise, i.e.:  
(1) concrete, specifying type of construction, e.g., liner, box, or vault;  
(II) steel, identified as stainless or by gauge, e.g., 12 gauge (or described as galvanized of a particular gauge);  
(III) wood;  
(IV) bronze or copper, described by weight or gauge, e.g., 32 oz. or 18 gauge; or  
(V) other specifically named material; and

(ii) The type of sealing feature, e.g., sealer, non-sealer, gasketed, or non-gasketed, if specified on the funeral establishment price list.

(B) Place on the list, however produced, the name of the funeral provider's place of business, address, and telephone number, and a caption describing the list as an "outer burial container price list."

(4) Urn price list.

(A) Give a printed or typewritten price list to persons who inquire in person about urn offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event, before showing the containers. The list must contain at least the retail prices of all urns offered which do not require special ordering, the description of an urn under this section must, at a minimum, include the type of material predominantly used in its construction. Bronze urns must be described as sheet bronze or cast bronze, whichever is applicable. The price list must include the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make an urn price list available if the
funeral providers place on the general price list, specified in paragraph (5) of this subsection, the information required by this subsection.

(B) Place on the list, however produced, the name of the funeral provider's place of business, address and telephone number and a caption describing the list as an "urn price list."

(5) General price list.

(A) Availability of general price list.

(i) Give a printed or typewritten price list for retention to persons who inquire in person about the funeral goods, funeral services or prices of funeral goods or services offered by the funeral provider. The funeral provider must give the list upon beginning discussion of any of the following:

(I) the prices of funeral goods or funeral services;

(II) the overall type of funeral service or disposition; or

(III) specific funeral goods or funeral services offered by the funeral provider.

(ii) The requirement in clause (i) of this subparagraph applies whether the discussion takes place in the funeral home or elsewhere. Provided, however, that when the deceased is removed for transportation to the funeral home, an in-person request at that time for authorization to embalm, required by §203.10(a)(2) of this title (relating to Prior approval for embalming), does not, by itself, trigger the requirement to offer the general price list if the provider in seeking prior embalming approval discloses that embalming is not required by law except in certain special cases, if any. Any other discussion during that time about prices or the selection of funeral goods or services triggers the requirement under clause (i) of this subparagraph to give consumers a general price list.

(iii) The list required in clause (i) of this subparagraph must contain at least the following information:

(I) the name, address, and telephone number of the funeral provider's place of business;

(II) a caption describing the list as a "general price list"; and

(III) the effective date for the price list.

(B) Include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:

(i) forwarding of remains to another funeral home, together with a list of the services provided for any quoted price;

(ii) receiving remains from another funeral home, together with a list of the services provided for any quoted price;

(iii) the price range for the direct cremations offered by the funeral provider, together with:

(I) a separate price for a direct cremation where the purchaser provides the container;

(II) separate prices for each direct cremation offered including an alternative container; and

(III) a description of the services and container (where applicable), included in each price;

(iv) the price range for the immediate burials offered by the funeral provider, together with:

(I) a separate price for an immediate burial where the purchaser provides the casket;

(II) separate prices for each immediate burial offered including a casket or alternative container; and

(III) a description of the services and container (where applicable) included in that price;

(v) transfer of remains to funeral home;

(vi) embalming;

(vii) other preparation of the body;

(viii) use of facilities and staff for viewing;

(ix) use of facilities and staff for funeral ceremony;

(x) use of facilities and staff for memorial service;

(xi) use of equipment and staff for graveside service;

(xii) hearse;

(xiii) limousine; and

(xiv) filing a claim seeking life insurance proceeds on behalf of the beneficiaries.

(C) Include on the general price list, in any order, the following information:

(i) Either of the following:

(I) The price range for the caskets offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(II) The prices of individual caskets, disclosed in the manner specified by paragraph (2)(A) of this subsection; and

(ii) Either of the following:

(I) The price range for the outer burial containers offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(II) The prices of individual outer burial containers, disclosed in the manner specified by paragraph (3)(A) of this subsection; and

(iii) Either of the following:

(I) The price for the basic services of funeral director and staff, together with a list of the principal basic services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement: "This fee for our basic services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains." If the charge cannot be declined by the purchaser, the quoted price shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services"; or

(II) The following statement: "Please note that a fee of (specify dollar amount) for the use of our basic services is included in the price of our caskets. This same fee shall be added to the total cost of your funeral arrangements if you provide the casket. Our services include (specify)." The fee shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services." The statement must be placed on the general price list together with the casket price range, required by clause (i)(I)
of this subparagraph, or together with the prices of individual caskets, required by clause (ii)(II) of this subparagraph.

(iii) If the funeral home charges for processing the insurance claim, that fee shall be disclosed.

(v) If a consumer intends to use the proceeds from an insurance policy to pay for a funeral and the funeral provider requires payment before the proceeds from such policy can be obtained and, if the funeral provider does not provide the service of filing a claim seeking life insurance proceeds on behalf of the beneficiary (or, if the funeral provides the service and the consumer does not wish to utilize the services of the funeral provider), the funeral provider shall include the following statement on the general price list: "Please note that if you utilize a third party to file a claim seeking expedited receipt of life insurance proceeds on behalf of a beneficiary, there will be a fee to be paid associated with the filing of such a claim."

(D) The services fee permitted by subparagraph (C)(iii)(I) or (II) of this paragraph is the only funeral provider fee for services, facilities or unallocated overhead permitted by this part to be non-declinable, unless otherwise required by law.

(6) Statement of funeral goods and services selected.

(A) Give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must list at least the following information:

(i) the funeral goods and funeral services selected by that person and the prices to be paid for each of them, unless there is a discounted package arrangement that itemizes the discount provided by the package arrangement;

(ii) specifically itemized cash advance items. (These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid);

(iii) the total cost of the goods and services selected; and

(iv) the complete description of all goods as described in paragraphs (2) - (5) of this subsection.

(B) The information required by this paragraph may be included on any contract, statement, or other document which the funeral provider would otherwise provide at the conclusion of discussion of arrangements.

(7) Other pricing methods. Funeral providers may give persons any other price information, in any other format, in addition to that required by paragraphs (2) - (5) of this subsection so long as the statement required by paragraph (6) of this subsection is given when required by the rule.

(8) Logos. If a funeral provider's graphically illustrated logo or a bold listing of the logo is included in an obituary, the funeral provider shall list separately the additional cost, if any, related to the inclusion of such logo in the case advance portion of the statement of goods and services.

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-201203089

Kevin Heyburn
Executive Director
Texas Funeral Service Commission
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Proposal publication date: January 6, 2012
For further information, please call: (512) 936-2469

22 TAC §203.29
The Texas Funeral Service Commission (Commission) adopts an amendment to §203.29, concerning Establishment Names and Advertising, with changes to the proposed text as published in the January 6, 2012, issue of the Texas Register (37 TexReg 44).

The amendment is adopted in order to clarify advertising media forms used by funeral establishments, crematories, commercial embalming establishments, and cemeteries.

Following are the public comments received and corresponding commission response:

COMMENT: The Commission received comments from the Texas Funeral Directors Association requesting the commission to implement the following changes: delete §203.29(c): "An establishment’s name may be changed by following the procedure for obtaining the original name"; and add §203.29(c): "An establishment’s licensed name maybe changed by following the procedure for obtaining the original name"; delete §203.29(e): "All advertising by a Texas licensed entity licensed by the Texas Funeral Service Commission must operate as follows."; and add §203.29(e): "All advertising on a website controlled by a Texas licensed entity licensed by the Texas Funeral Service Commission must operate as follows." delete §203.29(e)(1), and add: "The licensed name of the entity, or a registered trademark or registered trade name belonging to the licensed entity must appear on the contact information page."; delete §203.29(e)(2): "Irrespective of the name on the website, provisions must be made on the website so that an individual who wishes to consummate a funeral-related transaction must not be able to complete such a transaction without openly and apparently dealing with the licensed entity under the licensed name as reflected in the records of the Texas Funeral Service Commission, and add §203.29(e)(2): "The physical address of the licensed entity must appear on the contact information page, and delete §203.29(e)(3) "Any agents of a licensed entity or funeral provider shall be disclosed to the consuming public. All locations advertised shall be licensed by the Texas Funeral Service Commission."

COMMISSION RESPONSE: The Commission agrees with adding the new language in §203.29 "An establishment's licensed name may be changed by following the procedure for obtaining the original name", "(e) All advertising on a website controlled by a Texas licensed entity licensed by the Texas Funeral Service Commission must operate as follows: "(1) The licensed name of the entity, or a registered trademark or registered trade name belonging to the licensed entity must appear on the contact information page." The Commission disagrees with striking §203.29(e)(2). "Irrespective of the name on the website, provisions must be made on the website so that an individual who wishes to consummate a funeral-related transaction must not be able to complete such a transaction without openly and apparently dealing with
the licensed entity under the licensed name as reflected in
the records of the Texas Funeral Service Commission." The
Commission believes that amending §203.29(e)(2) will deter
false, misleading, or deceptive advertising.

The Commission agrees with striking some language in
§203.29(e)(3) to read as follows: "All locations advertised shall
be licensed by the Texas Funeral Service Commission." The
commission believes the amendment will clarify advertising
media forms used by licensed funeral establishments.

The Commission disagrees with striking §203.29(g), "Cremation
society websites or any advertising shall be linked with a licensed
funeral establishment or licensed crematory establishment. The
licensed funeral establishment and its location shall be provided
to the consuming public." The Commission believes enforcing
the amendments will assist in assurance of compliance and elim-
inating false, misleading, or deceptive advertising while conduct-
ing business with the consuming public.

The amendment is adopted under Texas Occupations Code,
§651.152. The commission interprets §651.152 as authorizing
it to adopt rules as necessary to administer Chapter 651.

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

§203.29. Establishment Names and Advertising.

(a) Each establishment's application for licensure shall contain
the name to be used on the license.

(b) Upon receiving an application for a new or changed es-
establishment license, the executive director shall review establishment
names in the commission's database. The executive director shall issue
the license in the requested name when all licensing requirements are
satisfied, unless the director determines that the name is deceptively or
substantially similar to the name of another licensed establishment in
the same county, metropolitan area, municipality, or service area. A
license shall not be issued to an establishment for a name that is de-
ceptively or substantially similar to the name of another establishment,
unless that establishment agrees in writing to the name's use.

(c) An establishment's licensed name may be changed by fol-
lowing the procedure for obtaining the original name.

(d) An applicant for approval of a new or changed name may
appeal the executive director's denial of the request to the commission.
The commission's decision is final.

(e) All advertising on a website controlled by a Texas licensed
entity licensed by the Texas Funeral Service Commission must operate
as follows:

(1) The licensed name of the entity, or a registered trade-
mark or registered trade name belonging to the licensed entity must
appear on the contact information page.

(2) Irrespective of the name on the website, provisions must be made on the website so that an individual who wishes to
consume a funeral-related transaction must not be able to complete
such a transaction without openly and apparently dealing with the
licensed entity under the licensed name as reflected in the records of
the Texas Funeral Service Commission.

(3) All locations advertised shall be licensed by the Texas
Funeral Service Commission.

(f) No establishment, commercial embalming establishment,
crematory, or cemetery shall advertise in a manner which is false, mis-
leading, or deceptive.

(g) Cremation society websites or any advertising shall be
linked with a licensed funeral establishment or licensed crematory
establishment. The licensed funeral establishment and its location
shall be provided to the consuming public.

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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Kevin Heyburn
Executive Director
Texas Funeral Service Commission
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For further information, please call: (512) 936-2469

22 TAC §203.39
The Texas Funeral Service Commission (Commission) adopts
an amendment to §203.39, concerning Embalmer in Charge,
with changes to the proposed text as published in the January
6, 2012, issue of the Texas Register (37 TexReg 45).

The amendment to §203.39 will clarify an individual cannot be
designated as the embalmer and funeral director in charge of
more than one establishment unless the additional establish-
ment are operated as branches or satellites of a primary estab-
lishment.

Following are the public comments received and corresponding
commission response:

COMMENT: The Commission received comments from Steve
Martin, Funeral Director and Embalmer of Stone Mortuary Ser-
vice, Inc. in Dallas, Texas requesting the commission to recon-
sider adding §203.39(b): "The embalmer in charge must be gen-
erally available in the routine functions of the commercial em-
balming establishment in order to personally carry out his or her
responsibilities", and add §203.39(b): "The embalmer in charge
must be a licensed embalmer, duly licensed by the Texas Fu-
neral Service Commission. This person's license should also
be in good standing with the Commission." Mr. Martin is re-
questing the commission to reconsider adding §203.39(d): "An
individual may not be designated as the embalmer and/or a fu-
neral director in charge of more than one establishment unless
the additional establishments are operated as branches or satel-
lites of a primary establishment, all of the establishments are
under the same ownership, same general management, and
no establishment is more than 60 miles from any other estab-
lishment held under the same ownership conditions", and add
§203.39(d): "The embalmer in charge may be served with ad-
ministrative process when violations are alleged to have been
committed in a commercial embalming establishment. In deter-
mining whether to charge an embalmer in charge with a violation
based on conduct for which a licensed employee of the com-
mercial embalming establishment was directly responsible, the
commission may consider: (1) the nature and seriousness of the vio-
lation; (2) the extent to which the licensed employee of the com-
mmercial embalming establishment whose conduct is the basis of
the violation was under the direct supervision of the embalmer
in charge or another person at the time the licensed employee
engaged in the conduct; and (3) the causal connection between
the supervision of the licensed employee of the commercial embalming establishment by the embalmer in charge and the conduct engaged in by the licensed employee that is the basis of the violation." Mr. Martin is also requesting the commission to reconsider adding §203.39(e): "In order to be designated embalmer in charge of more than one establishment, the licensee must submit a petition to the commission that clearly explains how each of the criteria in subsection (d) of this section have been met. The executive director shall decide whether to grant the petition. The request and decision will be made part of the permanent licensing file. The executive director's decision may be appealed, in writing, to the commission, and the appeal will be considered at the commission's next regularly scheduled meeting. The executive director shall advise interested parties of the action taken by the commission in writing", and add §203.39(e):

"An individual may not be designated as the embalmer in charge of more than one establishment unless the additional establishments are operated as branches or satellites of a primary establishment, all of the establishments are under the same ownership. Additionally, Mr. Martin is requesting the commission to reconsider §203.39(f): "If that; commercial embalming establishment employs a provisional licensee it is the responsibility of the designated embalmer in charge and the provisional licensee to schedule case work sufficient for the provisional program. It is also the responsibility of the designated embalmer in charge to ensure that each provisional licensee is properly supervised while performing cases. The provisional licensee must file a report with embalmer in charge outlining the number of cases performed during the month and the name of the embalmer under whom the cases were supervised. The embalmer in charge shall retain copies of all reports with supporting documentation for all case credit claimed for 2 years from the completion date of the provisional program."

The Commission received comments from the Texas Funeral Directors Association regarding §203.39(d), "An individual may not be designated as the embalmer and/or funeral director in charge of more than one establishment unless the additional establishments are operated as branches or satellites of a primary establishment, all of the establishments are under the same ownership, same general management, and no establishment is more than 60 miles from any other establishment held under the same ownership conditions". The Texas Funeral Directors Association requested that the commission reconsider increasing (not eliminating) the distance requirement for both funeral director in charge and embalmer in charge. Funeral homes in West Texas where there are many small towns separated by 80-100 miles, might be able to better serve the small communities if the distance was increased from 60 miles.

COMMISSION RESPONSE: While the Commission appreciates the responses from Mr. Martin and the Texas Funeral Directors Association Legislative Committee members, it determined that it would change the 60 miles restriction in subsection (d) to 100 miles but would make no other changes.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§203.39. Embalmer in Charge.

(a) Each licensed commercial embalming establishment must at all times have a designated embalmer in charge, who is ultimately responsible for compliance with all mortuary, health, and vital statistics laws in the commercial embalming establishment. A commercial embalming establishment must designate an embalmer in charge at the time it receives its establishment license, and any time the embalmer in charge changes, the commercial embalming establishment must notify the commission, on a form prescribed by the commission, within 15 days.

(b) The embalmer in charge must be generally available in the routine functions of the commercial embalming establishment in order to personally carry out his or her responsibilities.

(c) The embalmer in charge may be served with administrative process when violations are alleged to have been committed in a commercial embalming establishment.

(d) An individual may not be designated as the embalmer and/or a funeral director in charge of more than one establishment unless the additional establishments are operated as branches or satellites of a primary establishment, all of the establishments are under the same ownership, same general management, and no establishment is more than 100 miles from any other establishment held under the same ownership conditions.

(e) In order to be designated embalmer in charge of more than one establishment, the licensee must submit a petition to the commission that clearly explains how each of the criteria in subsection (d) of this section have been met. The executive director shall decide whether to grant the petition. The request and decision will be made part of the permanent licensing file. The executive director's decision may be appealed, in writing, to the commission, and the appeal will be considered at the commission's next regularly scheduled meeting. The executive director shall advise interested parties of the action taken by the commission in writing.

(f) If the commercial embalming establishment employs a provisional licensee it is the responsibility of the designated embalmer in charge and the provisional licensee to schedule case work sufficient for the provisional program. It is also the responsibility of the designated embalmer in charge to ensure that each provisional licensee is properly supervised while performing cases. The provisional licensee must file a report with embalmer in charge outlining the number of cases performed during the month and the name of the embalmer under whom the cases were supervised. The embalmer in charge shall retain copies of all reports with supporting documentation for all case credit claimed for 2 years from the completion date of the provisional program.

(g) The embalmer in charge of the facility where the provisional license is employed shall notify the commission in writing upon the completion of the provisional license program, as defined as the provisional license meeting all the requirements for regular licensure, by submitting the number of cases performed while the licensee was under the employment of said embalmer.

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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Kevin Heyburn
Executive Director
Texas Funeral Service Commission
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37 TexReg 4940       June 29, 2012       Texas Register
TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER P. COMMERCIAL PROPERTY INSURANCE

28 TAC §5.9600

The commissioner of insurance adopts the repeal of 28 Texas Administrative Code §5.9600, concerning the conduct of commercial property inspections and rating functions by private entities and the department’s regulatory oversight of these functions. The repeal is adopted without changes to the proposal as published in the April 20, 2012, issue of the Texas Register (37 TexReg 2866).

REASONED JUSTIFICATION. The repeal of this section is necessary to discontinue the oversight of commercial property inspections. Pursuant to 28 Texas Administrative Code §5.9600, the department oversees the commercial property inspections and ratings services of private entities by providing oversight inspections. The department has determined that this oversight function is no longer necessary to assure that the consumers of Texas are adequately and fairly served by private entities providing commercial property inspections and rating services. Private entities conducting commercial property inspections and rating services have been subject to oversight inspections since September 1994. Since November 1998, the department has not found any significant defects in the commercial property inspections and rating services being provided to Texas consumers by private entities. Further, the oversight of private entities providing commercial property inspections and rating is not required by statute. Thus, the department determines that the oversight of commercial property inspections and rating functions is an obsolete departmental function and is no longer required.

HOW THE SECTION WILL FUNCTION. The adoption of the repeal will result in the removal of an obsolete departmental function.

SUMMARY OF COMMENTS. The department did not receive any comments on the proposed repeal.

STATUTORY AUTHORITY. The repeal of §5.9600 is adopted pursuant to the Insurance Code §2001.002(b) and §36.001. Section 2001.002(b) addresses the department’s conduct of commercial property inspections and prescription of rating schedules for commercial property under a law described by the Insurance Code §2001.001(a). Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on June 15, 2012.

TRD-201203107

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §114.7 and §114.64 without changes to the proposed text as published in the January 27, 2012, issue of the Texas Register (37 TexReg 297).

Background and Summary of the Factual Basis for the Adopted Rules

The commission adopts the revisions to implement requirements of House Bill (HB) 3272, 82nd Legislature, 2011, authored by Representatives Lon Burnam and Warren Chisum.

The 77th Legislature, 2001, enacted HB 2134, to assist low-income individuals with repairs, retrofits, or retirement of vehicles that fail emissions inspections. The commission adopted rules providing the minimum guidelines for counties to implement a low income vehicle repair assistance, retrofit, and accelerated vehicle retirement program (LIRAP) implementing HB 2134, on March 27, 2002, as published in the April 12, 2002, issue of the Texas Register (27 TexReg 3194). Only those counties that have implemented a vehicle inspection and maintenance (I/M) program are eligible for participation in the LIRAP. Under the LIRAP, monetary assistance is provided for emission-related repairs directly related to bringing the vehicle into compliance or for replacement assistance for a vehicle that has failed the required emissions test. Vehicle eligibility criteria, such as the vehicle having been registered for the past two years in the participating county, were developed and adopted by the commission. Emission-related repairs covered by the LIRAP are required to be performed at a Texas Department of Public Safety (DPS)-recognized emissions repair facility. Participating counties may administer the LIRAP or contract with any appropriate entity or another county to administer the program. The 2001 law and rule stated that participating counties could expend no more than 5% of the funds received from the state for administrative costs. These rules provided for a minimum of $30 and a maximum amount of $600 for emission-related repairs, retrofit equipment, and installation; and a minimum of $600 and a maximum amount of $1,000 toward the purchase price of a replacement vehicle.

The 79th Legislature, 2005, enacted HB 1611, revising three key elements of the LIRAP. The legislation allowed for the LIRAP to be administered by the counties in accordance with Texas Government Code, Chapter 783, Uniform Grant and Contract Management, and allowed for programmatic costs such as call-center management, application oversight, invoice analysis, education, outreach, and advertising to be covered by LIRAP funds. The revision allowed for program administrators to utilize additional resources to attract and increase program participation.
The legislation removed the requirement that capped administrative costs at 5% of the funds provided to a county to fund the LIRAP. Finally, the legislation changed the vehicle registration eligibility requirement from two years to 12 months. The revision increased participation by making assistance available to those vehicle owners who had lived in the county for at least one year. The commission adopted rule revisions implementing HB 1611 (79th Legislature), on April 12, 2006, as published in the April 28, 2006, issue of the Texas Register (31 TexReg 3575).

The 80th Legislature, 2007, enacted Senate Bill (SB) 12, revising the LIRAP requirements. The commission initiated rulemaking at the conclusion of the legislative session to implement the legislative requirements. The legislation provided enhanced eligibility and assistance guidelines, retirement and replacement guidelines, and revised LIRAP administration fund limits. The legislation limited allowable administrative cost for counties implementing LIRAP to 10% of the funds allocated by the commission and increased the LIRAP vehicle owner’s income eligibility from 200% to 300% of the federal poverty level.

The legislation increased the assistance for the retirement and replacement of a vehicle from $1,000 to $3,000 for a car, current model year or up to three model years old; $3,000 for a truck, current model year or up to two model years old; and $3,500 for hybrid vehicle of current or previous model year. The legislation required that replacement vehicles must meet federal Tier 2, Bin 5 or cleaner emissions standards, have a gross vehicle weight rating of less than 10,000 pounds, and have a total purchase cost that did not exceed $25,000.

The legislation amended LIRAP definitions to include the terms: destroy; motor vehicle; hybrid motor vehicle; qualifying motor vehicle; emissions control equipment; dealer; automobile dealership; total cost; engine; and replacement vehicle. The rulemaking further added definitions for truck and car to clarify the vehicle model types that are associated with truck and car categories.

The legislation revised and enhanced capabilities for the retirement of older vehicles. Retired vehicle requirements included that: the vehicles be gasoline-powered and older than ten years; operated and registered in the implementing county for 12 months preceding the application; and had passed the DPS safety or safety and emissions inspection within 15 months of application. Owners of the vehicles to be retired were required to have an annual income of not more than 300% of the federal poverty level.

The legislation required that participating counties provide an electronic means for distributing vehicle repair and replacement funds and that the funds be transferred to a participating dealer no later than five business days after the date the county received proof of the sale and required administrative documents. The commission was required to develop a document to confirm that a person was eligible to purchase a replacement vehicle and the amount of money available to the purchaser through the program. The purchaser was required to have the document before the person entered into negotiations with a dealer for a replacement vehicle. The legislation required the commission to develop procedures for certifying that emissions control equipment and engines of the retired vehicles were scrapped.

The legislation required that dismantlers participating in the program must be located in Texas. Dismantlers were required to scrap the vehicle’s emissions control equipment, power train, and engine, and certify that those parts were scrapped and not resold into the marketplace. Dismantlers were also required to remove any mercury switches in accordance with state and federal law. The legislation required automobile dealerships participating in the program to be located in Texas and accept funds provided under the LIRAP as a down payment towards the purchase of a replacement vehicle. The commission worked in partnership with the steel industry and automobile dismantlers to ensure that vehicles were scrapped and that proof of scrapping is provided to the commission. The commission adopted requirements implementing SB 12, on December 5, 2007, as published in the December 21, 2007, issue of the Texas Register (32 TexReg 9711).

The 82nd Legislature, 2011, enacted HB 3272 authorizing changes to the LIRAP. The legislation modified certain guidelines and procedures for administering the LIRAP that required revisions to existing rules and added new or amended current program definitions to include replacement vehicle, hybrid vehicle, electric vehicle, and natural gas vehicle.

The legislation required the commission to revise the amount of replacement assistance provided to $3,500 for a replacement vehicle of the current model year or the previous three model years if the vehicle is a hybrid vehicle, electric vehicle, natural gas vehicle, or is in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 3 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, issue of the Federal Register (65 FR 6698).

The legislation amended criteria for replacement vehicles to require that replacement vehicles have an odometer reading of not more than 70,000 miles and a sales price of $35,000 or less, for a car, current model year or up to three model years old; a sales price of $35,000 or less, for a truck, current model year or up to two model years old; or a sales price of $45,000 or less for a hybrid vehicle, electric vehicle, natural gas vehicle or a vehicle certified to meet or exceed federal Tier 2, Bin 3 or cleaner certification of the current model year or up to three model years old. The legislation amended the eligibility of a vehicle to be retired requiring that the vehicle be registered in a program county for at least 12 of the 15 months preceding the application.

Section by Section Discussion

Subchapter A, Definitions

§114.7, Low Income Repair Assistance, Retrofits, and Accelerated Vehicle Retirement Program Definitions

The adopted amendment to §114.7, includes adding and defining electric vehicle and natural gas vehicle and modifying the definition of a hybrid motor vehicle. An electric vehicle is defined as a motor vehicle that draws propulsion energy only from a rechargeable energy storage system. A natural gas vehicle is defined as a motor vehicle that uses only compressed natural gas or liquefied natural gas as fuel. Adopted §114.7 also revises the term hybrid motor vehicle to hybrid vehicle and the definition of replacement vehicle to incorporate changes to §114.64(c)(4). Other definitions in §114.7 are renumbered to make adjustments for the new definitions added to the section.

Subchapter C, Division 2, Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program

§114.64, LIRAP Requirements

The adopted amendment to §114.64(b)(3), relating to repair and retrofit assistance, revises the length of time that a vehicle must
be registered in a LIRAP program county. Section 114.64(b)(3) still requires that a vehicle be currently registered in the program county. However, the time preceding the application for assistance that a vehicle must be registered in the program county is changed from at least 12 months to at least 12 of the 15 months.

The adopted amendment to §114.64(c)(4)(C), relating to accelerated vehicle retirement, adds the requirement that eligible replacement vehicles have an odometer reading of no more than 70,000 miles. The adopted amendment to §114.64(c)(4)(D) changes the requirement that a replacement vehicle's total cost must not exceed $25,000 to a replacement vehicle be a vehicle of which the total cost does not exceed $35,000 or $45,000 for hybrid, electric, or natural gas vehicles, or vehicles certified as Tier 2 Bin 3 or cleaner.

The commission also adopts the amendment to §114.64(d)(1)(B)(iii), relating to compensation, to modify the replacement vehicle compensation amount of $3,500 for a replacement hybrid vehicle of the current model year or the previous model year. Amended §114.64(d)(1)(B)(iii) allows replacement vehicle compensation of $3,500 for hybrid, electric, natural gas, and federal Tier 2 Bin 3 or cleaner vehicles of the current model year or the previous three model years.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the adopted rulemaking does not meet the definition of a major environmental rule. Texas Government Code, §2001.0225 states that a major environmental rule is 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. Furthermore, while the adopted rulemaking does not constitute a major environmental rule, even if it did, a regulatory impact analysis is not be required because the adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. Specifically, the adopted rulemaking does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the adopted rulemaking is not designed to exceed any relevant standard set by federal law; 2) parts of the adopted rulemaking are directly required by state law; 3) no contract or delegation agreement covers the topic that is the subject of this adopted rulemaking; and 4) the adopted rulemaking is authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code (TWC), which are cited in the Statutory Authority section of this preamble.

The amendments are adopted in accordance with HB 3272, 82nd Legislature, 2011, which amended THSC, Chapter 382. The adopted rules will add or revise guidelines for a voluntary grant. Because the adopted rules place no involuntary requirements on the regulated community, the adopted rules would not 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. In addition, none of these adopted amendments place additional financial burdens on the regulated community.

The commission’s interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of substantial compliance as required in Texas Government Code, §2001.035. The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No written comments on the draft regulatory impact analysis determination were submitted.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission’s assessment indicates Texas Government Code, Chapter 2007 does not apply.

Under Texas Government Code, §2007.002(5), taking means: (A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) affects an owner’s private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner’s right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

Promulgation and enforcement of the adopted rulemaking will be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with the amendments to THSC, Chapter 382 as a result of HB 3272, 82nd Legislature. The adopted rulemaking provides for revisions to a voluntary program and only affect motor vehicles and equipment that are not considered to be private real property. The adopted rulemaking does not affect a landowner’s rights in private real property because this rulemaking will not burden, restrict, or limit the owner’s right to property, nor will it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program
The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), concerning rules subject to the Texas Coastal Management Program (CMP), and therefore, required that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is editorial and procedural in nature and will have no substantive effect on commission actions subject to the CMP and therefore, is consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period and received no comments.

Public Comment

The commission offered a public hearing on February 21, 2012, in Austin. No member of the public wished to present comments, so staff did not open the public hearing. The comment period closed on February 27, 2012. The commission received no comments.

SUBCHAPTER A. DEFINITIONS

30 TAC §114.7

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; §5.103, which authorizes the commission to adopt rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment is also adopted under Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; and THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air. Finally, this rulemaking is adopted under THSC, §382.209, amending definitions for the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program authorized under THSC, §382.209.

The adopted amendment implements House Bill 3272, 82nd Legislature, 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.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: January 27, 2012
For further information, please call: (512) 239-2141

CHAPTER 342. REGULATION OF CERTAIN AGGREGATE PRODUCTION OPERATIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts new §§342.1, 342.25, and 342.26.

Sections 342.1 and 342.25 are adopted with changes to the proposed text as published in the January 27, 2012, issue of the Texas Register (37 TexReg 304). Section 342.26 is adopted without change to the proposed text and will not be republished.
Background and Summary of the Factual Basis for the Adopted Rules

House Bill (HB) 571 passed in the 82nd Legislature, 2011 and was codified in Texas Water Code (TWC), Chapter 28A. HB 571 was authored by Representative Dan Huberty and sponsored by Senator Tommy Williams.

The statute exempts certain aggregate production operations (APOs) from the requirements. The statute requires active APOs to register and pay a fee annually. The statute does not contain any additional technical requirements for APOs beyond those required in other applicable rules and regulations. The statute also contains requirements for the TCEQ. These include conducting an annual survey, beginning September 2012, to facilitate locating active APOs; conducting compliance investigations of each active APO once every three years; and, providing specified information on APOs as part of the annual enforcement report. Additionally, the statute gives the commission the authority to assess penalties in accordance with the TCEQ penalty policy and within the conditions outlined in the statute, and establish an annual registration fee in an amount sufficient to maintain a registry of active APOs but not to exceed $1,000. For APOs submitting a Notice of Audit in conjunction with initial registration, as outlined in TWC, §28A, Section 2(b), compliance investigations of these APOs will not begin before September 2015.

Section by Section Discussion

Section 342.1 is adopted with changes to the proposed text. New §342.1, Definitions, is adopted to define terms pertinent to and defined in TWC, §28A.

Section 342.1(1)(B) is amended by removing the word "temporary" since public works projects can be lengthy and the same site can be used for multiple public works projects.

Section 342.1(1)(E) is amended to read: "a site at which aggregates are being removed or extracted or processed where the primary purpose of removal or extraction or processing is not for commercial sale." This clarifies that non-commercial processing of aggregates is also exempt from this rulemaking.

Section 342.25 is adopted with change to the proposed text. New §342.25, Registration, is adopted to address requirements for the annual registration of all APOs. As stipulated in TWC, §28A, annual registration for each APO is required provided regulated activities continue. Upon cessation of regulated activities, the APO shall notify the TCEQ in writing. Registration will be facilitated by submission of required forms either electronically or via hard copy. All sites will be required to register annually.

Adopted §342.25(a) is amended to read: "The responsible party for an aggregate production operation, in operation on or before September 1, 2012, shall register each operation with the commission within the 60-day period beginning September 1, 2012." This change is necessary to ensure that adequate funding will be available for the program in fiscal year 2013 in light of Legislative Budget Board funding requirement set forth in Article 9, Section 18.40 of the General Appropriation Act of the 82nd Legislature, 2011.

Initial registration begins on September 1, 2012, and must be completed no later than October 30, 2012.

Section 342.26 is adopted without changes to the proposed text. New §342.26, Registration Fees, is adopted to address required annual registration fees for all APOs. Each site is required to submit an annual registration fee. TWC, §28A requires the TCEQ to set fees in the amount necessary to cover the costs of administering the program, not to exceed $1,000 per year. The adopted rule states that the maximum fee shall not exceed $1,000.

The adopted rule does not specify the actual fees, but allows the TCEQ to establish fees that do not exceed the maximum fee of $1,000. Specifying the maximum fee in the rule allows the TCEQ flexibility to adjust fees as needed to support the program. Structuring the rule pertaining to the fee in this manner also allows the TCEQ to examine fee structures, such as a tiered fee structure, that may prove more desirable to stakeholders.

Stakeholder meetings were held on September 13, 2011 and December 6, 2011, to support both the development of these rules and other implementation activities, including fee development. It was during these meetings that stakeholders asked the TCEQ to consider a tiered fee structure, primarily to lessen the fee burden for small business. To consider a tiered fee structure, additional information from APOs was necessary.

The TCEQ developed outreach materials that include a questionnaire related to registration fees. This questionnaire collected information about type of operation, type of material extracted, and stakeholder preferences related to fee structure. TCEQ mailed 1,998 questionnaires, of which 495 were returned as undeliverable. A total of 157 responses were received. Upon evaluation of the responses and input from stakeholders at the stakeholder meetings, a tiered fee structure will be implemented using the size of the operation as the basis for the tiers.

Final Regulatory Impact Analysis Determination

The commission adopts the rulemaking under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, a "major environmental rule" means 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.

The primary purpose of the adopted rulemaking is to implement HB 571, 82nd Legislature, 2011, by adding Chapter 342, Regulation of Certain Aggregate Production Operations. The adopted rulemaking creates a new aggregates registration and inspection program which includes the establishment of an annual registration fee. Certain aspects of this rulemaking are intended to protect the environment or reduce risks to human health from environmental exposure. The adopted rulemaking would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor would the adopted rulemaking adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. Therefore, the adopted rulemaking does not fit the Texas Government Code, §2001.0225 definition of "major environmental rule."

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because this rulemaking does not constitute a major environmental rule, a regulatory impact analysis was not required. The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No com-
ments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or a governmental action that affects an owner’s private real property that is the subject of the governmental action, in whole or in part temporarily or permanently, in a manner that restricts or limits the owner’s right to the property that would otherwise exist in the absence of the governmental action and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The commission determined that the promulgation and enforcement of the rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The adopted rules also will not affect private real property in a manner that restricts or limits an owner’s right to the property that would otherwise exist in the absence of the governmental action. The adopted rules are administrative and do not impose any new regulatory requirements. The primary purpose of the adopted rules is to implement HB 571 by adding Chapter 342, Regulation of CertainAggregate Production Operations. The adopted rulemaking is reasonably taken to fulfill requirements of state law. Therefore, the adopted rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the rulemaking was subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the adopted rules include to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas and to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

There are no CMP policies applicable to the adopted rules.

The adopted rules are consistent with the CMP goals and policies because the adopted rules are consistent with these CMP goals and policies and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received on the CMP.

Public Comment

A public hearing on the proposed rules was held in Austin on February 9, 2012. The public comment period ended on February 27, 2012. Comments were received from Georgia-Pacific Gypsum LLC, Texas Aggregates and Concrete Association (TACA), Texas and Southwestern Cattle Raisers Association (TSCRA), Texas Cattle Feeders Association (TCFA), Texas Department of Agriculture (TDA), Texas Forestry Association (TFA), Texas Mining and Reclamation Association (TMRA), and Westward Environmental, Inc.

TACA generally supported the proposal. The remaining commenters expressed concern with specific issues on the proposed rules as outlined in the RESPONSE TO COMMENTS section of this preamble.

RESPONSE TO COMMENTS

General Comments

TACA generally supported the proposed rules.

The commission acknowledges this comment.

Westward Environmental, Inc. requested that the commission include a de minimis section in the rules that would exempt small operations that do not need air or stormwater authorizations.

HB 571 does not create an exclusion for small operations. The rule complies with HB 571. No changes were made to the rules in response to this comment.

Westward Environmental, Inc. requested that TCEQ give a courtesy phone call prior to site inspections.

Notification prior to investigations will be conducted in accordance with statutes, rules, and agency policy. No changes were made to the rules in response to this comment.

Westward Environmental, Inc. asked if concrete batch plants, hot mix plants, and pulp mills that are co-located at quarry sites, but have different responsible parties, will be inspected under the requirements of HB 571. Westward Environmental, Inc. is concerned that if this occurs, violations may be issued to the wrong entity due to paperwork issues related to the Regulatory Entity Reference Number (RN Number).

The rules do not address inspections or issuance of violations. However, during the inspection process investigators may determine the responsible party for each facility and if each facility is subject to this rulemaking. Facilities that meet the definition of APO in the rules are subject to the inspection requirements under HB 571. Violations are issued in accordance with statute, rules, and agency policy. No changes were made to the rules in response to this comment.

Westward Environmental, Inc. asked if an APO could submit a Notice to Conduct a Compliance Audit "now" and register prior to September 1, 2012, and still be eligible for the inspection cycle starting September 1, 2015.
The rules do not address the notice of intent to conduct an audit. However, HB 571 does allow APOs that submit this notice, in conjunction with registering, to postpone initial inspections until September 2015. This notice may be submitted before the registration provided that both are submitted before the deadline of October 30, 2012. No changes were made in response to this comment.

Notices of intent to conduct an audit may be submitted to: Deputy Director, Office of Compliance and Enforcement, Texas Commission on Environmental Quality, MC-172, P.O. Box 13087, Austin, Texas 78711-3087.

Georgia-Pacific Gypsum LLC states that the gypsum industry is already under significant regulatory requirements and inspections. Additional regulation will be duplicative of existing regulations and will cause unnecessary burden on the regulated entity and the TCEQ.

The commission respectfully disagrees with this comment. This rulemaking implements HB 571 which was duly enacted by the 82nd Legislature, 2011. The commission does not view HB 571 as a duplicative regulation. The rulemaking process is not the proper forum to challenge enacted legislation. No change was made to the rules in response to this comment.

Section 342.1 Definitions

Westward Environmental, Inc. requested clarification on whether the definition of APO would include a site where clean fill material is being added to an area that was previously mined in order to reclaim the site. The definition of APO includes a site at which aggregates are "removed or extracted." A site where fill material is added to an area is not an APO. No changes were made to the rule in response to this comment.

TCFA, TFA, and TSCRA recommend striking the word "temporary" from §342.1(1)(B) or define the term. TCFA and TSCRA state that public works projects can take many months to complete. Additionally, there may be more than one public works project going on at once using the same site which could extend the length of time needed for the site. TDA recommends that the exemption for temporary public works projects should extend the life of the project.

The commission agrees with these comments and has amended §342.1(1)(B) by removing the word "temporary."

TDA and TFA recommend that the definitions be clarified to ensure landowners have the flexibility to extract, process, and utilize their aggregates on their own land as necessary. TCFA and TSCRA state that non-commercial aggregate operations sometimes use aggregates on land that they own or lease that is not contiguous to the land and site where the aggregate is being removed, extracted, or processed. TCFA and TSCRA recommend revising §342.1(1)(C) to read: "an extraction area from which raw material is extracted for use as fill or for other construction uses on that same property or on another property owned or leased by the same person or entity."

The commission fully appreciates this concern. In fact, landowners and non-commercial aggregate operations that are extracting or processing material where the primary purpose is not for commercial sale are already exempted in §342.1(1)(E). This exemption allows these persons or operations to use the extracted material anywhere, regardless of location or ownership, so long as it's not used for commercial sale or processing. TCEQ intends to develop guidance regarding implementation of the rule. Because the commenter's concerns are already accounted for in the rule, no additional changes were made to the rule in response to these comments.

TCFA and TSCRA recommend revising §342.1(1)(E) to read: "a site at which aggregates are being removed or extracted or processed where the primary purpose of removal or extraction or processing is not for commercial sale." TCFA, TFA, and TSCRA state that this revision would clarify that processing, in addition to removal and extraction, for non-commercial use would also be exempt from regulation under this rule.

The commission agrees with these comments and has amended §342.1(1)(E) as suggested.

Georgia-Pacific Gypsum LLC recommends TCEQ clarify that gypsum operations should not be regulated under this rule by revising the last sentence of §342.1(2) as follows: "For purposes of this chapter, the term aggregates does not include clay or shale mined for use in manufacturing structural clay products or gypsum or other extracted material consumed or incorporated into manufactured construction materials such as drywall." Georgia-Pacific Gypsum LLC notes that the definition of aggregates applies to "commonly recognized construction materials." Georgia-Pacific Gypsum LLC notes that materials that are not themselves a "commonly recognized construction material" but rather are consumed and incorporated into a commonly recognized construction product through subsequent manufacturing and processes after extraction should not be subject to this rule.

The commission respectfully disagrees with this comment. The language of §342.1(2) mirrors the language in HB 571. Inclusion of gypsum as an "aggregate" and a "commonly recognized construction material," is consistent with other TCEQ rules, specifically 30 TAC §311.71(2) which defines "aggregates" as, "any commonly recognized construction material originating from a quarry or pit by the disturbance of the surface, including . . . gypsum . . . ." HB 571 does not create a specific exclusion or exception for gypsum. Accordingly, the rules being promulgated do not have an exclusion or exception for gypsum. No change was made in response to this comment.

Section 342.26, Registration Fees

Westward Environmental, Inc. commented that within a given year a site may be used by multiple operators. Each operator would have to register, pay the registration fee, and terminate their registration when their use of the site ends. This process would be repeated for each operator. This scenario results in TCEQ getting multiple registration fees for the same site within a year.

HB 571 requires that a person who is authorized to operate an APO shall pay a registration fee annually. The rule complies with HB 571. No changes were made to the rule in response to this comment.

TMRA recommends that a single fee should apply to all registrants. TMRA states that larger operations will avoid themselves of the Notice of Intent to Conduct a Compliance Audit, which postpones investigations until September 1, 2015. This will minimize TCEQ staff time and resources during this period. It would not be equitable to establish a higher registration fee for larger facilities since the facility would not require an equally higher level of inspection work for the agency.
In accordance with HB 571, the rule requires that the fee shall not exceed $1,000. Neither the bill nor the rules establish a fee structure. The fee structure will be established with input from stakeholders. No changes were made to the rule in response to this comment.

**SUBCHAPTER A. GENERAL PROVISIONS**

**30 TAC §342.1**

**Statutory Authority**

The new rule is adopted under the authority of Texas Government Code, under Texas Water Code (TWC), §5.102, General Powers; TWC, §5.103, Rules; and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rulemaking necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The new rule is also adopted under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. The new rule is also adopted under THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.003, concerning Definitions; and THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air.

The adopted new rule implements HB 571, 82nd Legislature, 2011, by adding Chapter 342, Regulation of Certain Aggregate Production Operations.

**§342.1. Definitions.**

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

1. Aggregate production operation--A site from which aggregates are being or have been removed or extracted from the earth, including the entire area of extraction, stripped areas, haulage ramps, and the land on which the plant processing the raw materials is located, exclusive of any land owned or leased by the responsible party not being currently used in the production of aggregates. For the purposes of this chapter, the term aggregate production operation does not include:

   (A) a site at which aggregates are being removed or extracted from the earth used or processed at the same site or at a related site under the control of the same responsible party for the primary purpose of production of cement or lightweight aggregates, or in a lime kiln;

   (B) a site that is being used solely to provide aggregate products for use in a public works project involving the Texas Department of Transportation, any other state agency, or a local governmental entity;

   (C) an extraction area from which all raw material is extracted for use as fill or for other construction uses at the same or a contiguous site;

   (D) a site at which the aggregates that are being removed or extracted from the earth are used or processed for use in the construction, modification, or expansion of a solid waste facility at the site or another location; or

   (E) a site at which aggregates are being removed, extracted, or processed where the primary purpose of removal, extraction, or processing is not for commercial sale.

2. Aggregates--Any commonly recognized construction material originating from an aggregate production operation from which an operator extracts dimension stone, crushed and broken limestone, crushed and broken granite, crushed and broken stone not elsewhere classified, construction sand and gravel, industrial sand, dirt, soil, or caliche. For purposes of this chapter, the term aggregates does not include clay or shale mined for use in manufacturing structural clay products.

3. Commission--The Texas Commission on Environmental Quality.

4. Operator--Any person engaged in and responsible for the physical operation and control of the extraction of aggregates.

5. Owner--Any person having title, wholly or partly, to the land on which an aggregate production operation exists or has existed.

6. Regulated Activity--Any activity that is regulated by the Texas Commission on Environmental Quality.

7. Responsible party--The operator, lessor, or owner who is responsible for the overall function and operation of an aggregate production operation.

8. Site--one or more contiguous or adjacent properties under common control by the same responsible party.

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

Filed with the Office of the Secretary of State on June 15, 2012.
TRD-201203100
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: July 5, 2012
Proposal publication date: January 27, 2012
For further information, please call: (512) 239-2141

**SUBCHAPTER B. REGISTRATION AND FEES**

**30 TAC §342.25, §342.26**

**Statutory Authority**

The new rules are adopted under the authority of Texas Government Code, under Texas Water Code (TWC), §5.102, General Powers; TWC, §5.103, Rules; and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rulemaking necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. This new rules are also adopted under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. This new rules are also adopted under THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard...
the state’s air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.003, concerning Definitions; and THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state’s air.

The adopted new rules implement HB 571, 82nd Legislature, 2011, by adding Chapter 342, Regulation of Certain Aggregate Production Operations.

§342.25. Registration.

(a) The responsible party for an aggregate production operation, in operation on or before September 1, 2012, shall register each operation with the commission within the 60-day period beginning September 1, 2012.

(b) The responsible party for an aggregate production operation that begins operations after September 1, 2012 shall register each operation with the commission not later than the 10th business day before the beginning date of regulated activities.

(c) An aggregate processing plant that has the same responsible party and is located at the same site from which aggregates are being or have been removed or extracted from the earth is not required to obtain a separate registration.

(d) The responsible party for an aggregate production operation shall renew the registration annually as regulated activities continue.

(e) Within 30 days after all regulated activities at an aggregate production operation have ceased, the responsible party shall submit a registration cancellation request to the commission.

(f) Applications for registration or cancellation of a registration shall be made on forms prescribed by the executive director.

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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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2141

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.52

The Texas Board of Criminal Justice adopts amendments to §151.52, concerning the Sick Leave Pool, without changes to the proposed text as published in the May 4, 2012, issue of the Texas Register (37 TexReg 3382).

The amendments are necessary to clarify that there is no limit on the frequency of donations to the sick leave pool.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §§661.008 - 661.201.

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-201203190
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Effective date: July 8, 2012
Proposal publication date: May 4, 2012
For further information, please call: (512) 463-9693

CHAPTER 155. REPORTS AND INFORMATION GATHERING
SUBCHAPTER B. SITE SELECTION AND FACILITY NAMES

37 TAC §155.23

The Texas Board of Criminal Justice adopts amendments to §155.23, concerning the Site Selection Process for the Location of Additional Facilities, without changes to the proposed text as published in the May 4, 2012, issue of the Texas Register (37 TexReg 3382).

The amendments are necessary to conform the rule to state law and add clarity.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013 and §496.007.

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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Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
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For further information, please call: (512) 463-9693

CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.25

The Texas Board of Criminal Justice adopts amendments to §163.25, concerning the Community Justice Council and Plans,

ADOPTED RULES  June 29, 2012  37 TexReg 4949
The Texas Board of Criminal Justice adopts amendments to §163.42, concerning Substantial Noncompliance, without changes to the proposed text as published in the May 4, 2012, issue of the Texas Register (37 TexReg 3385).

The amendments are not substantive.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §§509.003 and §509.007.

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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Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
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For further information, please call: (512) 463-9693

37 TAC §163.42

EXPLANATION OF ADOPTED REPEALS, NEW SECTIONS AND AMENDMENTS

These rules implement and enforce Occupations Code, Chapter 2301, Subchapter M, Warranties: Rights of Vehicle Owners, sometimes referred to as the "Texas Lemon Law," and Occupations Code, §2301.204. The adopted new sections and amendments conform the rules to changes mandated by House Bill 2017, 82nd Legislature, Regular Session, update the rules to current enforcement practices, and will permit the department to effectively administer complaints and issue final orders expeditiously. Other changes clarify and more accurately describe department procedures. "Department" is substituted for "division" throughout the subchapter as administration of the program has been transferred from the Motor Vehicle Division to the Enforcement Division of the department.

The changes to §§215.201, 215.202, and 215.206 - 215.208 are extensive; therefore, the department adopts the repeal and replacement of these sections with new rules bearing the same section numbers.

Adopted new §215.201 sets out the objective of the rules in the subchapter and defines applicable terms. Definitions direct the public to the appropriate statutory definitions and define "comparable motor vehicle." House Bill 2017 authorized the board to delegate final order authority. A definition of "final order authority" clarifies that both the board and director may delegate final order authority to a designee, and to explain who has final order authority in these two types of complaints. The final order authority for complaints filed under Occupations Code §2301.204 is the Board of the Department of Motor Vehicles; the final order authority for complaints filed under the Texas Lemon Law is the Motor Vehicle Division director.

Adopted new §215.202 describes the requirements and information that must be included in a complaint filed with the department. It is now broken into two subsections to clarify the different requirements for filing a Lemon Law or Warranty Performance Complaint. Subsection (a) addresses the filing and adjudication of Lemon Law Complaints and sets forth the statutory filing fee requirements. Subsection (b) concerns Warranty Performance Complaints, applicable to repair-only relief. There is no filing fee for a complaint filed under subsection (b).

Adopted amendments to §215.203 provide that complaints will be reviewed by the department rather than by the Motor Vehi-
Adopted amendments to §215.204 clarify that the department will give notice and a copy of a complaint to appropriate parties for response.

The adopted amendment to §215.205 replaces references to the Motor Vehicle Division with references to the department and clarifies that the section applies to both Lemon Law and Warranty Performance complaints.

Adopted new §215.206 describes the hearing process for Lemon Law and Warranty Performance complaints that satisfy jurisdictional requirements. It provides that hearings will be held in the city where the complainant resides or a place reasonably convenient for the complainant. Hearings will be conducted expeditiously by a State Office of Administrative Hearings (SOAH) administrative law judge (ALJ) using the rules in this subchapter, Subchapter I of this chapter and Occupations Code, §2301.704 unless the department's rules conflict with SOAH rules.

New paragraph (4) provides for informal hearings at which the parties have the right, but not the obligation, to be represented by counsel. The provision requires notice to the administrative law judge, the department and the other party if a party will be represented by counsel. The remainder of §215.206 concerns the conduct of the hearing. New paragraph (8) provides that, except for hearings conducted over the telephone, the vehicle that is the subject of the hearing must be brought to the hearing by the complainant so that it may be inspected and tested driven. New paragraph (9) allows the department to have the vehicle inspected by an expert before the hearing if the department determines expert opinion may assist in arriving at a decision. New paragraph (10) provides for the recording of all hearings, other than those conducted solely on written submissions, at the direction of the administrative law judge. Copies of the recorded proceedings will be provided to any party upon request and payment.

Adopted new §215.207 concerns contested cases, proposals for decision and final orders. Paragraph (1) provides that the administrative law judge will prepare the proposal for decision no later than 60 days after the hearing concludes, or as otherwise provided by law, that the proposal for decision will include findings of facts and conclusions of law, and that the proposal for decision will be mailed to the parties. Paragraph (2) requires the final order authority to issue an order following its review of the proposal for decision and the department to send the order to the parties. Paragraph (3) provides that the order is final and binding unless a timely motion for rehearing is filed. Paragraph (4) sets forth the requirements applicable to motions for rehearing, and paragraph (5) requires the final order authority to act on the motion for rehearing within 45 days of order issuance notification, or as otherwise required by law. This paragraph also permits the final order authority to extend the periods for filing, replying to and taking action on motions for rehearing, not to exceed 90 days after the date of notification of final order issuance. New paragraph (6) concerns notifications relating to motions for rehearing and order issuances if motions for rehearing are denied. New paragraph (7) concerns judicial review under the substantial evidence rule. It requires that the petition be filed in Travis County district court or in the Court of Appeals for the Third District within 30 days after the order is final and appealable, sets forth the service requirements and requires the final order authority to transmit the original or a certified copy of the record to the court. Paragraph (8) allows the board to delegate final order issuance to the executive director for complaints filed under Occupations Code §2301.204.

The provisions of new §215.208 are specific to Lemon Law Relief Decisions. Subsection (a) is general and provides for the issuance of a final order to the manufacturer, distributor or converter to replace the vehicle with a comparable motor vehicle if it is found that the vehicle cannot be conformed to an express warranty by repair or defect correction. Subsection (b) concerns the repurchase of motor vehicles and toatable recreational vehicles. It sets forth how the refund of the purchase price is determined, establishes a rebuttable presumption of useful motor vehicle life of 120,000 miles and establishes how the reasonable allowance for owner's use of the vehicle shall be determined. Subsection (b)(3) provides a rebuttable presumption that the useful life of a toatable recreational vehicle is 3,650 days (10 years) and describes the formula used to determine the reasonable allowance for owner use.

Subsection (c)(1)(A) addresses leased vehicle relief and sets forth the purchase price allocation to be paid to the lessor and lessee when a refund of the purchase price of a lease vehicle is ordered. Subsection (c)(1)(B) describes what the lessor shall receive and subsection (c)(2) relates to title transfer. Subsection (c)(3) concerns refunds to lessees, lessors and lienholders and determination of the reasonable allowance for lessee use of the vehicle computed pursuant to the formula in subsection (b)(2) or (3) using the amount in subsection (c)(1)(B)(i) as the purchase price. Subsection (c)(3) is adopted with changes to clarify the reference to the pertinent clause of subsection (c)(1)(B) defining the purchase price calculation.

Subsection (d) explains the motor vehicle replacement process to be followed when an order is issued to a manufacturer, converter or distributor for replacement. Subsection (d)(1) describes the vehicle exchange process and the price and use allowance. Subsection (d)(2) requires the complainant to pay or finance the usage allowance upon a vehicle replacement and describes how higher and lower MSRP on the comparable vehicle is to be addressed. The responsibility for financing, if necessary, is the complainant's under subsection (d)(3), and the replacement transaction must be completed pursuant to the final order under subsection (d)(4).

Subsection (e) provides that if the final order authority finds that a complainant's vehicle does not qualify for replacement or repurchase, an order may be entered, where appropriate, requiring repair work or other action to obtain compliance with warranty obligations of the manufacturer, converter, or distributor, as applicable. In instances where an adverse change in vehicle condition occurs subsequent to the date of the hearing, but before repurchase of the vehicle, subsection (f) authorizes either party to request that the final order authority reconsider the purchase price.

Subsection (g) permits the final order authority to require the dealer to reimburse the complainant, manufacturer, converter or distributor for the cost of any items or options added to the vehicle if the addition of the items or options contributed to the vehicle defect that is the basis of the final order.

The adopted amendment to §215.209 extends reimbursement of incidental expenses to instances in which the motor vehicle is replaced.
The adopted amendment to §215.210 replaces references to "the Board's order" with "an order issued by the final order authority" since the final order authority may sometimes be the board and other times be the Motor Vehicle Division director. It also changes responsibility for monitoring compliance with orders from the board to the department, since department staff will monitor compliance with orders issued by both the department board and the Motor Vehicle Division director. Section 215.210(4) is adopted with changes that allow the department, rather than the Motor Vehicle Division director, to approve the reacquired vehicle disclosure statement form. Also, language is removed from the proposed paragraph indicating that the agency must issue and approve a basic warranty form for non-original equipment manufacturer items. Both of these changes are intended to further streamline the management of warranty performance functions within the agency.

COMMENTS

No comments on the proposed repeals, new sections, or amendments were received.


STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §1002.001, which authorizes the board of the Texas Department of Motor Vehicles to establish rules as necessary and appropriate to implement the powers and duties of the department, and Occupations Code, §2301.155, which authorizes the Board to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301. More specifically, the repeals are authorized by Occupations Code, §2301.602(b), which requires the board to adopt rules implementing and enforcing the warranty performance obligations set forth in Occupations Code, Chapter 2301, Subchapter M.

CROSS REFERENCE TO STATUTE

Occupations Code, §§2301.154, 2301.204, 2301.601 - 2301.613.


(a) Unless otherwise indicated, this section applies to decisions that relate to lemon law complaints. Decisions shall give effect to the presumptions provided in Occupations Code, §2301.605, where applicable.

(1) If it is found that the manufacturer, distributor, or converter is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect in the complainant's vehicle which creates a serious safety hazard or substantially impair the use or market value of the vehicle after a reasonable number of attempts, and that the affirmative defenses provided under Occupations Code, §2301.606, are not applicable, the final order authority shall issue a final order to the manufacturer, distributor, or converter to replace the vehicle with a comparable motor vehicle, less a reasonable allowance for the owner's use of the vehicle, or accept the return of the vehicle from the owner and refund to the owner the full purchase price of the vehicle, less a reasonable allowance for the owner's use of the vehicle.

(2) In any decision in favor of the complainant, the final order authority will accommodate the complainant's request with respect to replacement or repurchase of the vehicle, to the extent possible.

(b) This subsection applies only to the repurchase of motor vehicles.

(1) Where a refund of the purchase price of a vehicle is ordered, the purchase price shall be the total purchase price of the vehicle, but shall not include the amount of any interest, finance charge or insurance premiums. The award to the vehicle owner shall include reimbursement for the amount of the lemon law complaint filing fee paid by or on behalf of the vehicle owner. The refund shall be made payable to the vehicle owner and the lienholder, if any, as their interests require.

(2) There is a rebuttable presumption that a motor vehicle has a useful life of 120,000 miles. Except in cases where the preponderance of the evidence shows that the vehicle has a longer or shorter expected useful life than 120,000 miles, the reasonable allowance for the owner's use of the vehicle shall be that amount obtained by adding subparagraphs (A) and (B) of this paragraph.

(A) the product obtained by multiplying the purchase price of the vehicle, as defined in paragraph (1) of this subsection, by a fraction having as its denominator 120,000 and having as its numerator the number of miles that the vehicle traveled from the time of delivery to the owner to the first report of the defect or condition forming the basis of the repurchase order; and

(B) 50 percent of the product obtained by multiplying the purchase price by a fraction having as its denominator 120,000 and having as its numerator the number of miles that the vehicle traveled after the first report of the defect or condition forming the basis of the repurchase order. The number of miles during the period covered in this paragraph shall be determined from the date of the first report of the defect or condition forming the basis of the repurchase order through the date of the hearing.
(3) There is a rebuttable presumption that the useful life of a towable recreational vehicle is 3,650 days (10 years). Except in cases where preponderance of the evidence shows that the vehicle has a longer or shorter expected useful life than 3,650 days (10 years), the reasonable allowance for the owner's use of the towable recreational vehicle shall be that amount obtained by adding subparagraphs (A) and (B) of this paragraph.

(A) The product obtained by multiplying the purchase price of the towable recreational vehicle, as defined in paragraph (1) of this subsection, by a fraction having as its denominator 3,650 days (10 years), except the denominator shall be 1,825 days (5 years), if the towable recreational vehicle is occupied on a full time basis, and having as its numerator the number of days from the time of delivery to the owner to the first report of the defect or condition forming the basis of the repurchase order.

(B) 50 percent of the product obtained by multiplying the purchase price by a fraction having as its denominator 3,650 days (10 years), except the denominator shall be 1,825 days (5 years), if the towable recreational vehicle is occupied on a full time basis, and having as its numerator the number of days of ownership after the first report of the defect or condition forming the basis of the repurchase order. The number of days during the period covered in this paragraph shall be determined from the date of the first report of the defect or condition forming the basis of the repurchase order through the date of the hearing.

(C) Any day or part of a day that the vehicle is out of service for repair will be deducted from the numerator in determining the reasonable allowance for use of a towable recreational vehicle in this paragraph.

(c) This subsection applies only to leased motor vehicle relief.

(1) Except in cases involving unusual and extenuating circumstances, supported by a preponderance of the evidence, where refund of the purchase price of a leased vehicle is ordered, the purchase price shall be allocated and paid to the lessee and the lessor, respectively set out as follows in subparagraphs (A) and (B) of this paragraph.

(A) The lessee shall receive the total of:

(i) all lease payments previously paid by him to the lessor under the terms of the lease; and

(ii) all sums previously paid by him to the lessor in connection with entering into the lease agreement, including, but not limited to, any capitalized cost reduction, down payment, trade-in, or similar cost, plus sales tax, license and registration fees, and other documentary fees, if applicable.

(B) The lessor shall receive the total of:

(i) the actual price paid by the lessor for the vehicle, including tax, title, license, and documentary fees, if paid by lessor, and as evidenced in a bill of sale, bank draft demand, tax collector's receipt, or similar instrument; plus

(ii) an additional 5 percent of such purchase price plus any amount or fee paid by lessor to secure the lease or interest in the lease;

(iii) provided, however, that a credit, reflecting all of the payments made by the lessee, shall be deducted from the actual purchase price which the manufacturer, converter, or distributor is required to pay the lessor, as specified in clauses (i) and (ii) of this subparagraph.

(2) When the final order authority orders a manufacturer, converter, or distributor to refund the purchase price in a leased vehicle transaction, the vehicle shall be returned to the manufacturer, converter, or distributor with clear title upon payment of the sums indicated in paragraph (1)(A) and (B) of this subsection. The lessor shall transfer title of the vehicle to the manufacturer, converter, or distributor, as necessary to effectuate the lessee's rights. The lease shall be terminated without penalty to the lessee.

(3) Refunds shall be made to the lessee, lessor, and any lienholders as their interest may appear. The refund to the lessee under paragraph (1)(A) of this subsection shall be reduced by a reasonable allowance for the lessee's use of the vehicle. A reasonable allowance for use shall be computed according to the formula in subsection (b)(2) or (3) of this section, using the amount in paragraph (1)(B)(i) of this subsection as the applicable purchase price.

(d) This subsection applies only to replacement of motor vehicles.

(1) Upon issuance of an order from the final order authority to a manufacturer, converter, or distributor to replace a motor vehicle, the manufacturer, converter, or distributor shall:

(A) Promptly authorize the exchange of the complainant's vehicle with the complainant's choice of any comparable motor vehicle.

(B) Instruct the dealer to contract the sale of the selected comparable vehicle with the complainant under the following terms:

(i) The sales price of the comparable vehicle shall be the vehicle's Manufacturer's Suggested Retail Price (MSRP);

(ii) The trade-in value of the complainant's vehicle shall be the MSRP at the time of the original transaction, less a reasonable allowance for the complainant's use of the complainant's vehicle; and

(iii) The use allowance for replacement relief shall be calculated using the formulas outlined in subsection (b)(2) and (3) of this section.

(2) Upon any replacement of a complainant's vehicle, the complainant shall be responsible for payment or financing of the usage allowance of the complainant's vehicle, any outstanding liens on the complainant's vehicle, and applicable taxes and fees associated with the new sale, excluding documentary fees.

(A) If the comparable vehicle has a higher MSRP than the complainant's vehicle, the complainant shall be responsible at the time of sale to pay or finance the difference in the two vehicles' MSRP's to the manufacturer, converter or distributor.

(B) If the comparable vehicle has a lower MSRP than the complainant's vehicle, the complainant will be credited the difference in the MSRP between the two vehicles. The difference credited shall not exceed the amount of the calculated usage allowance for the complainant's vehicle.

(3) The complainant is responsible to obtain financing, if necessary, to complete the transaction.

(4) The replacement transaction, as described in paragraphs (2) and (3) of this subsection, shall be completed as specified in the final order. If this cannot be accomplished within the ordered time period, the manufacturer shall repurchase the complainant's motor vehicle pursuant to the repurchase provisions of this section. If repurchase relief occurs, a party may request calculation of the repurchase price by the final order authority.

(e) If the final order authority finds that a complainant's vehicle does not qualify for replacement or repurchase, an order may be
entered in any proceeding, where appropriate, requiring repair work to be performed or other action taken to obtain compliance with the manufacturer's, converter's, or distributor's warranty obligations.

(f) If the vehicle is substantially damaged or there is an adverse change in its condition, beyond ordinary wear and tear, from the date of the hearing to the date of repurchase, and the parties are unable to agree on an amount allowed for such damage or condition, either party may request reconsideration by the final order authority of the repurchase price contained in the final order.

(g) In any award in favor of a complainant, the final order authority may require the dealer involved to reimburse the complainant, manufacturer, converter, or distributor for the cost of any items or options added to the vehicle if one or more of such items or options contributed to the defect that is the basis for the order, repurchase or replacement. This subsection shall not be interpreted to require a manufacturer, converter, or distributor to repurchase a vehicle due to a defect or condition that was solely caused by a dealer add-on item or option.


Compliance with an order issued by the final order authority will be monitored by the department.

(1) A complainant is not bound by a final decision and order and may either accept or reject the decision.

(2) If a complainant does not accept the final decision, the proceeding before the final order authority will be deemed concluded and the complaint file closed.

(3) If the complainant accepts the final decision, then the manufacturer, converter, or distributor and the dealer to the extent of the dealer's responsibility, if any, shall immediately take such action as is necessary to implement the final decision and order.

(4) If a manufacturer, converter, or distributor replaces or repurchases a vehicle pursuant to an order issued by the final order authority, reacquires a vehicle to settle a complaint filed under Occupations Code, Chapter 2301, Subchapter M or Occupations Code, §2301.204, or brings a vehicle into the state of Texas which has been reacquired to resolve a warranty claim in another jurisdiction, the manufacturer, converter, or distributor shall, prior to resale of such vehicle, re-title the vehicle in Texas and issue a disclosure statement on a form provided by or approved by the department. In addition, the manufacturer, converter, or distributor reacquiring the vehicle shall affix a disclosure label provided by or approved by the department on an approved location in or on the vehicle. Both the disclosure statement and the disclosure label shall accompany the vehicle through the first retail purchase. No person or entity holding a license or general distinguishing number issued by the department under Occupations Code, Chapter 2301 or Transportation Code, Chapter 503 shall remove or cause the removal of the disclosure label until delivery of the vehicle to the first retail purchaser. A manufacturer, converter, or distributor shall provide the department in writing, the name, address, and telephone number of any transferee, regardless of residence, to whom the manufacturer, distributor, or converter, as the case may be, transfers the vehicle within 60 days of each transfer. The selling dealer shall return the completed disclosure statement to the department within 60 days of the retail sale of a reacquired vehicle. Any manufacturer, converter, or distributor or holder of a general distinguishing number who violates this section is liable for a civil penalty or other sanctions prescribed by the Occupations Code. In addition, the manufacturer, converter, or distributor must repair the defect or condition in the vehicle that resulted in the vehicle being reacquired and issue, at a minimum, a basic warranty (12 months/12,000 mile, whichever comes first), except for non-original equipment manufacturer items or accessories, which warranty shall be provided to the first retail purchaser of the vehicle.

(5) In the event of any conflict between this section and the terms contained in a cease and desist order, the terms of the cease and desist order shall prevail.

(6) The failure of any manufacturer, converter, distributor or dealer to comply with a final order issued by the final order authority within the time period prescribed in the order may subject the manufacturer, converter, or distributor, or dealer to formal action by the department, including the assessment of civil penalties or other sanctions prescribed by Occupations Code, Chapter 2301, for the failure to comply with an order issued by the final order authority. This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 15, 2012.
TRD-201203142
Brett Bray
General Counsel
Texas Department of Motor Vehicles
Effective date: July 5, 2012
Proposal publication date: March 23, 2012
For further information, please call: (512) 467-3853

37 TexReg 4954  June 29, 2012  Texas Register
REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of plan to review; (2) notices of intention to review, which invite public comment to specified rules; and (3) notices of readoption, which summarize public comment to specified rules. The complete text of an agency’s plan to review is available after it is filed with the Secretary of State on the Secretary of State’s web site (http://www.sos.state.tx.us/texreg). The complete text of an agency’s rule being reviewed and considered for readoption is available in the Texas Administrative Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the Texas Register office.

Agency Rule Review Plan
Credit Union Department
Title 7, Part 6
TRD-201203212
Filed: June 18, 2012

Proposed Rule Reviews
State Board for Educator Certification
Title 19, Part 7
The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 229, Accountability System for Educator Preparation Programs, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 229 continue to exist. The comment period begins June 29, 2012, and ends following receipt of public comments on the rule review of 19 TAC Chapter 229 at the next regularly scheduled SBEC meeting to be held on August 10, 2012.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-5337. Comments should be identified as “SBEC Rule Review.”

TRD-201203084
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Filed: June 14, 2012

Texas Parks and Wildlife Department
Title 31, Part 2
The Texas Parks and Wildlife Department files this notice of intention to review the following chapters of the Texas Administrative Code Title 31, Part 2:

Chapter 51. Executive
Subchapter A. Procedures for the Adoption of Rules

§51.2. Content and Submission of Petitions for Rulemaking.
§51.3. Consideration and Disposition.
Subchapter B. Authority to Contract
§51.60. Authority to Contract.
Subchapter C. Employee Fundraising and Sponsorships
§51.70. Gifts to the Department.
§51.71. Employee Fundraising Activities.
§51.72. Youth-appropriate Advertising.
Subchapter D. Education
§51.80. Hunter Education Course and Instructors.
§51.81. Mandatory Boater Education.
Subchapter E. Sick Leave Pool
§51.141. Sick Leave Pool.
Subchapter F. Vehicles
§51.151. Use of Uninscribed Vehicles.
§51.152. Assignment and Use of Agency Vehicles.
Subchapter G. Nonprofit Organizations
§51.162. Criteria and General Requirements.
§51.163. Best Practices (General).
§51.164. Best Practices (Officers and Directors).
§51.165. Best Practices (Fundraising).
§51.166. Best Practices (Sponsorship).
§51.167. Department Procedures.
Subchapter I. Historically Underutilized Businesses
§51.171. Historically Underutilized Business Program.
Subchapter J. Contract Dispute Resolution
§51.200. Applicability.
§51.201. Definitions.
§51.202. Prerequisites to Suit.
§51.203. Sovereign Immunity.
§51.204. Notice of Claim of Breach of Contract.
§51.205. Agency Counterclaim.
§51.207. Duty to Negotiate.
§51.208. Timetable.
§51.209. Conduct of Negotiation.
§51.211. Settlement Agreement.
§51.212. Costs of Negotiation.
§51.213. Request for Contested Case Hearing.
§51.214. Mediation Timetable.
§51.215. Conduct of Mediation.
§51.216. Agreement to Mediate.
§51.217. Qualifications and Immunity of the Mediator.
§51.218. Confidentiality of Mediation and Final Settlement Agreement.
§51.219. Costs of Mediation.
§51.220. Settlement Approval Procedures.
§51.221. Initial Settlement Agreement.
§51.222. Final Settlement Agreement.
§51.223. Referral to the State Office of Administrative Hearings.
§51.225. Alternative Dispute Resolution.
Subchapter K. Disclosure of Customer Information
§51.300. Definitions.
§51.301. Duties of the Department.
§51.302. Applicability.
§51.303. Disclosure of Information.
§51.304. Exceptions.
§51.305. Price.
§51.306. Procedure.
Subchapter L. Vendor Dispute Resolution
Subchapter M. Investment of Lifetime License Endowment
§51.400. Investment of Lifetime License Endowment Fund.
Subchapter N. Employee Training
§51.500. Employee Training.
Subchapter O. Advisory Committees
Division 1. General Requirements
§51.601. General Requirements.
Division 2. Wildlife
§51.606. White-tailed Deer Advisory Committee (WTDAC).
§51.607. Migratory Game Bird Advisory Committee (MGBAC).
§51.608. Upland Game Bird Advisory Committee (UGBAC).
§51.609. Private Lands Advisory Committee (PLAC).
§51.610. Bighorn Sheep Advisory Committee (BSAC).
§51.611. Wildlife Diversity Advisory Committee (WDAC).
Division 3. Coastal Fisheries
§51.621. Artificial Reef Advisory Committee (ARAC).
§51.622. Blue Crab Advisory Committee (BCAC).
§51.623. Oyster Advisory Committee (OAC).
§51.624. Shrimp Advisory Committee (SAC).
Division 4. Inland Fisheries
§51.631. Freshwater Fisheries Advisory Committee (FFAC).
Division 5. State Parks
§51.641. Texas Statewide Trails Advisory Board (TSTAB).
§51.642. San Jacinto Historical Advisory Board (SJHAB).
§51.643. Historic Sites Advisory Committee (HSAC).
§51.644. Big Bend Ranch State Park Task Force.
Division 6. Law Enforcement
§51.652. Game Warden Academy Advisory Committee (GWAAC).
Division 7. Communications
§51.661. Expo Advisory Committee (EAC).
§51.662. Outreach, Interpretation, and Education Advisory Committee (OIEAC).
Division 8. Committees of the Commission
§51.671. State Parks Advisory Committee (SPAC).
§51.672. Coastal Resources Advisory Committee (CRAC).
§51.673. Land Resources Advisory Committee (LRAC).
§51.674. Aquatic Resources Advisory Committee (ARAC).
Subchapter P. Official Corporate Partners
§51.700. Definitions.
§51.701. Designation of OCPs.
§51.702. Guidelines.
§51.703. Advertising.
§51.704. Licensing of the Department Brands.
Chapter 52. Stocking Policy
§52.101. Purpose and Scope.
§52.102. Definitions.
§52.103. Goals.
§52.104. Policy of the Department.
§52.105. Powers and Duties of the Executive Director.
§52.201. Departmental Stocking under Federal Funding Guidelines.
§52.202. Conditions for Stockings Made or Authorized by the Department.
§52.301. Non-Federally Funded Departmental Stocking.
§52.401. Fish Stocking in Private Waters.
Chapter 55. Law Enforcement
Subchapter A. Proof of Residency Requirements
§55.1. Proof of Residency.

Subchapter B. Seizure, Care and Disposition of Contraband
§55.10. Application.
§55.12. Definitions.
§55.16. Property Subject to Lien or Perfected Security Instrument.
§55.18. Care and Custody of Seized Property Pending Court Hearing.
§55.20. Setting of Forfeiture Hearing.

Subchapter C. Deputy and Special Game Warden Commission
§55.61. Definitions.
§55.62. Deputy Game Wardens.
§55.63. Special Game Wardens.
§55.64. Additional Requirements.

Subchapter D. Operation Game Thief Fund
§55.111. Definitions.
§55.112. Donations and Disbursements.
§55.113. Reporting Violations; Eligibility of Applicant.
§55.114. Rewards: Payment.
§55.115. Limitations: Unclaimed Rewards.

Subchapter E. Show, Test, and Demonstration of Vessels
§55.130. Show, Test, or Demonstration of Vessel.

Subchapter F. Floating Cabins
§55.201. Definitions.
§55.203. Relocation Requirements.
§55.204. Replacement Requirements.
§55.205. Identification and Marking Requirements.
§55.206. Permit Purchase Program.
§55.207. Specifications for Marine Sanitation Devices.

Subchapter G. Boat Speed Limit and Buoy Standards
§55.301. Application.
§55.302. Definitions.
§55.303. General Rules.
§55.304. System of Markers.
§55.305. Penalties.

Subchapter H. Party Boats
§55.401. Definitions.
§55.402. Applicability and Exceptions.
§55.403. License Required.

§55.405. Employer/Owner Responsibilities.
§55.406. Violations and Penalties.

Subchapter I. Disposition of Dangerous Wild Animals
§55.501. Application.
§55.503. Disposition of Live Animals.
§55.505. Disposition of Carcass, Hide, or Part of Animal, or Product Made from Animal.

Subchapter J. Controlled Exotic Snakes
§55.651. Definitions.
§55.652. Permit Required.
§55.653. Permit Issuance and Period of Validity.
§55.654. Possession of Commercial Permit.
§55.655. Recordkeeping.
§55.656. Inspection; Seizure.
§55.657. Violations and Penalties.

Subchapter K. Interstate Wildlife Violator Compact
§55.675. Interstate Wildlife Violator Compact.

Subchapter L. Marine Safety Enforcement--Training and Certification Standards
§55.801. Application.
§55.802. Definitions.
§55.803. General Rules.
§55.804. Marine Safety Enforcement Officer Course Standards.
§55.805. Marine Safety Enforcement Officer Instructor Course Standards.
§55.806. Reporting Requirements.
§55.807. Fees.

Subchapter M. Mandatory Boating Incident Report
§55.850. Mandatory Boating Incident Report.

Chapter 60. Maintenance Reviews
Subchapter A. Maintenance Equipment Review
§60.2. Definitions.
§60.3. Maintenance Equipment Review System.
§60.4. Sale of Outdated Equipment.

Subchapter B. Maintenance Provider Review
§60.10. Definitions.
§60.11. Maintenance Provider Review System.

Chapter 61. Design and Construction
Subchapter A. Contracts for Public Works
§61.22. Soliciting Bids.
§61.23. Submission and Receipts of Bids.
§61.24. Award of Bids.

RULE REVIEW  June 29, 2012  37 TexReg 4957
§61.26. Award in Response to Proposals.

Subchapter B. Procedural Guide for Land and Water Conservation Fund Program
§61.81. Application Procedures.

Subchapter C. Boat Ramp Construction and Rehabilitation
§61.102. General.
§61.103. Fees.

Subchapter D. Guidelines for Administration of Local Land and Water Conservation Fund Projects
§61.121. Policy.

Subchapter E. Guidelines for Administration of Texas Local Parks, Recreation, and Open Space Fund Program
§61.134. Grants for Indoor Recreation Programs.
§61.135. Grants for Community Outreach Outdoor Programs.
§61.136. Small Community Grant Programs.
§61.137. Grants for Regional Parks Grant Programs.
§61.139. Indoor Urban Park Grants Program.

This review is pursuant to the Texas Government Code, §2001.039. The department will accept comments for 30 days following the publication of this notice in the Texas Register as to whether the reasons for adopting the sections under review continue to exist. Final consideration of this rules review is scheduled for the Parks and Wildlife Commission on November 8, 2012.

Any questions or written comments pertaining to this notice of intention to review should be directed to Ann Bright, General Counsel, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744. Any proposed changes to rules as a result of the review will be published in the Proposed Rules section of the Texas Register and will be open for an additional 30-day public comment period prior to final adoption or repeal by the Commission.

TRD-201203253
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: June 19, 2012

Adopted Rule Reviews
Office of Consumer Credit Commissioner

Title 7, Part 5
The Finance Commission of Texas (commission), on behalf of the Office of Consumer Credit Commissioner, has completed the review of Texas Administrative Code, Title 7, Part 5, Chapter 82, concerning Administration. Chapter 82 consists of §82.1, concerning Custody of Criminal History Record Information; §82.2, concerning Public Information Requests; Charges; and §82.3, concerning Request for Criminal History Evaluation Letter.

Notice of the review of 7 TAC Part 5, Chapter 82 was published as required in the May 11, 2012, issue of the Texas Register (37 TexReg 3609). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. The commission is concurrently proposing amendments to 7 TAC Chapter 82 published elsewhere in this issue of the Texas Register.

Subject to the proposed amendments to Chapter 82, the commission finds that the reasons for initially adopting these rules continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 7 TAC Part 5, Chapter 82.

TRD-201203181
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 18, 2012

Credit Union Department
Title 7, Part 6
The Credit Union Commission (Commission) has completed its review of Texas Administrative Code, Title 7, Part 6, §§91.7000 (Certificates of Indebtedness) as published in the March 9, 2012, issue of the Texas Register (37 TexReg 1787).

The rule was reviewed as a result of the general rule review by the Credit Union Department (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 re-adopt.

The Commission received no comments with respect to this rule. The Department believes that the reasons for initially adopting this rule continue to exist. The Commission finds that the reasons for initially adopting §91.7000 continue to exist, and re-adopts this rule without changes pursuant to the requirements of Government Code, §2001.039.

TRD-201203181
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 18, 2012

The Credit Union Commission (Commission) has completed its review of Texas Administrative Code, Title 7, Part 6, §§91.8000 (Discovery of Confidential Information) as published in the March 9, 2012, issue of the Texas Register (37 TexReg 1787).

The rule was reviewed as a result of the general rule review by the Credit Union Department (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 re-adopt.
The Commission received no comments with respect to this rule. The Department believes that the reasons for initially adopting this rule continue to exist. The Commission finds that the reasons for initially adopting §91.8000 continue to exist, and readopts this rule without changes pursuant to the requirements of Government Code, §2001.039.

TRD-201203179
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 18, 2012

Texas Department of Criminal Justice
Title 37, Part 6

The Texas Board of Criminal Justice adopts the review of §151.52, concerning the Sick Leave Pool, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the May 4, 2012, issue of the Texas Register (37 TexReg 3423).

Elsewhere in this issue of the Texas Register, the Texas Board of Criminal Justice contemporaneously adopts amendments to §151.52.

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

TRD-201203186
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: June 18, 2012

The Texas Board of Criminal Justice adopts the review of §155.23, concerning the Site Selection Process for the Location of Additional Facilities, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the May 4, 2012, issue of the Texas Register (37 TexReg 3423).

Elsewhere in this issue of the Texas Register, the Texas Board of Criminal Justice contemporaneously adopts amendments to §155.23.

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

TRD-201203187
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: June 18, 2012

The Texas Board of Criminal Justice adopts the review of §163.25, concerning the Community Justice Councils, Task Forces and Plans, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the May 4, 2012, issue of the Texas Register (37 TexReg 3423).

Elsewhere in this issue of the Texas Register, the Texas Board of Criminal Justice contemporaneously adopts amendments to §163.25.

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

TRD-201203188
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: June 18, 2012

The Texas Board of Criminal Justice adopts the review of §163.42, concerning the Substantial Noncompliance, pursuant to the Texas Government Code, §2001.039.

The proposed rule review was published in the May 4, 2012, issue of the Texas Register (37 TexReg 3423).

Elsewhere in this issue of the Texas Register, the Texas Board of Criminal Justice contemporaneously adopts amendments to §163.42.

No comments were received regarding the rule review.

The agency's reason for adopting the rule continues to exist.

TRD-201203189
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: June 18, 2012

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Part 1, Chapter 1, concerning Consumer Credit Regulation. Chapter 1 consists of Subchapter B, which contains §1.201, concerning Interpretations and Advisory Letters.

The Finance Commission of Texas adopted the review of §1.201, concerning Consumer Credit Regulation. The amendment was published in the May 4, 2012, issue of the Texas Register (37 TexReg 3609). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rule contained in this chapter continue to exist.

The commission has determined that certain revisions are appropriate and necessary. The commission is concurrently proposing amendments to 7 TAC Chapter 1 published elsewhere in this issue of the Texas Register.

Subject to the proposed amendments to Chapter 1, the commission finds that the reasons for initially adopting this rule continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 7 TAC Part 1, Chapter 1.

TRD-201203145
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Filed: June 15, 2012

Texas State Library and Archives Commission
Title 13, Part 1
The Texas State Library and Archives Commission (commission) adopts the review of Chapter 1, concerning library development in accordance with the requirements of Government Code §2001.039, which directs state agencies to review and consider for re-adoption each of their rules every four years.

The proposed rule review was published in the May 4, 2012, issue of the Texas Register (37 TexReg 3424).

The commission has determined that the reasons for adopting these rules continue to exist.

No comments were received concerning the proposed rule review.

The sections in Chapter 1 are adopted under Government Code §441.006 that provides the commission with authority to govern the Texas State Library, §441.009 that provides the commission with authority to adopt a state plan for library services, §441.0091 which provides the commission with authority to adopt rules on various subjects, §441.136 that provides the Texas State Library and Archives Commission with authority to adopt rules for administration of the Library Systems Act, and §441.138 that provide the Texas State Library and Archives Commission to use funds appropriated by the legislature for administrative expenses.

The adopted sections affect Government Code §§441.121 - 441.139.

This concludes the review of Chapter 1.

TRD-201203075
Edward Seidenberg
Deputy Director
Texas State Library and Archives Commission
Filed: June 13, 2012

The Texas State Library and Archives Commission (commission) adopts the review of 13 TAC Chapter 4, concerning school library programs in accordance with the requirements of Government Code §2001.039, which directs state agencies to review and consider for re-adoption each of their rules every four years.

The proposed rule review was published in the May 4, 2012, issue of the Texas Register (37 TexReg 3424).

The commission has determined that the reasons for adopting the rule continue to exist.

No comments were received concerning the proposed rule review.

The section in Chapter 4 is adopted under Education Code §33.021 which requires the Texas State Library and Archives Commission to adopt standards for school library services in consultation with the State Board of Education, and Government Code §441.006(a)(1-2) which authorizes the Commission to govern the Texas State Library and adopt rules to aid and encourage libraries.

The adopted section affects Education Code §33.02.

This concludes the review of Chapter 4.

TRD-201203074
Edward Seidenberg
Deputy Director
Texas State Library and Archives Commission
Filed: June 13, 2012

Texas Workforce Investment Council

Title 40, Part 22

The Texas Workforce Investment Council (Council) adopts the review of Texas Administrative Code (TAC) Title 40, Part 22, Chapter 901, concerning Designation and Redesignation of Local Workforce Development Areas, in accordance with Texas Government Code, §2001.039.

The notice of intention to review 40 TAC Chapter 901, §901.1 and §901.2 was published in the March 16, 2012, issue of the Texas Register (37 TexReg 1917). The public comment period closed on April 16, 2012.

No public comments regarding the rule review of 40 TAC Chapter 901 were received during the 30 day comment period.

In reviewing the rules, the Council determines that the original reason for adopting this chapter continues to exist. No changes will be proposed to the rules (40 TAC §901.1 and §901.2) as a result of this review.

This rule review is adopted under the authority of Texas Government Code, §2308.101(3) which requires the Council to recommend to the Governor the designation and redesignation of local workforce development areas; and §2308.103(a)(1) which authorizes the Council to adopt rules. No other code, statute, or article is affected by this rule review.

This concludes the review of 40 TAC Chapter 901.

TRD-201203255
Lee Rector
Council Director
Texas Workforce Investment Council
Filed: June 19, 2012

37 TexReg 4960  June 29, 2012  Texas Register
Figure: 1 TAC §93.33(a)(1)

State of __________________________
County of __________________________

__________________________, personally appeared before me, and being first duly sworn declared that he/she signed this application in the capacity designated, if any, and further states that he/she has read the above application and the statements therein contained are true and correct.

(Personalized Seal) Signature of Officer
Authorized to Administer Oaths
TOMI'S MORTGAGE COMPANY DISCLOSURE

Residential Mortgage Loan Originator: ________________________________

NMLS ID: ________________________________

Check ALL that apply

Duties and Nature of Relationship

- We will submit your loan application to a participating lender which we may from time to time contract upon such terms as you may request, or a lender may require. In connection with this mortgage loan, we are acting as an independent contractor and not as your agent.

- We will make your loan ourselves. In connection with this mortgage loan, we are acting as an independent contractor and not as your agent.

- We will be acting as follows:

How we will be compensated

- The retail price we offer you - your interest rate, total points, and fees - will include our compensation. In some cases we may be paid all of our compensation by you or by the lender or investor.

- Our pricing for your loan is based upon:

CONSUMERS WISHING TO FILE A COMPLAINT AGAINST A COMPANY OR A RESIDENTIAL MORTGAGE LOAN ORIGINATOR SHOULD COMPLETE AND SEND A COMPLAINT FORM TO THE TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING 2601 NORTH LAMAR, SUITE 201, AUSTIN, TEXAS 78705. COMPLAINT FORMS AND INSTRUCTIONS MAY BE OBTAINED FROM THE DEPARTMENTS WEBSITE AT WWW.SML.TEXAS.GOV. A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT 1-877-276-5550.

THE DEPARTMENT MAINTAINS A RECOVERY FUND TO MAKE PAYMENTS OF CERTAIN ACTUAL OUT OF POCKET DAMAGES SUSTAINED BY BORROWERS CAUSED BY ACTS OF LICENSED RESIDENTIAL MORTGAGE LOAN ORIGINATORS. A WRITTEN APPLICATION FOR REIMBURSEMENT FROM THE RECOVERY FUND MUST BE FILED WITH AND INVESTIGATED BY THE DEPARTMENT PRIOR TO THE PAYMENT OF A CLAIM. FOR MORE INFORMATION ABOUT THE RECOVERY FUND, PLEASE CONSULT THE DEPARTMENT'S WEBSITE AT WWW.SML.TEXAS.GOV.

Applicant(s)                                      Residential Mortgage Loan Originator

<table>
<thead>
<tr>
<th>Signed:</th>
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<tbody>
<tr>
<td>Name:</td>
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<td>Date:</td>
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</table>
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Figure: 7 TAC §80.200(b)
TEXAS MORTGAGE BANKER DISCLOSURE

Residential Mortgage Loan Originator: __________________________

NMLS ID: __________________________________________________

Pursuant to the requirements of Section 157.007 of the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, Chapter 157, Texas Finance Code, you are hereby notified of the following:

CONSUMERS WISHING TO FILE A COMPLAINT AGAINST A MORTGAGE BANKER OR A LICENSED MORTGAGE BANKER RESIDENTIAL MORTGAGE LOAN ORIGINATOR SHOULD COMPLETE AND SEND A COMPLAINT FORM TO THE TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, 2601 NORTH LAMAR, SUITE 201, AUSTIN, TEXAS 78705. COMPLAINT FORMS AND INSTRUCTIONS MAY BE OBTAINED FROM THE DEPARTMENT'S WEBSITE AT WWW.SML.TEXAS.GOV. A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT 1-877-276-5550.

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THIS DISCLOSURE WAS DELIVERED TO THE CONSUMER:

☐ IN PERSON
☐ BY FAX
☐ BY E-MAIL
☐ OTHER __________________________

DATE DELIVERY INITIATED: ________________
"CONSUMERS WISHING TO FILE A COMPLAINT AGAINST A MORTGAGE BANKER OR A LICENSED MORTGAGE BANKER RESIDENTIAL MORTGAGE LOAN ORIGINATOR SHOULD COMPLETE AND SEND A COMPLAINT FORM TO THE TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, 2601 NORTH LAMAR, SUITE 201, AUSTIN, TEXAS 78705. COMPLAINT FORMS AND INSTRUCTIONS MAY BE OBTAINED FROM THE DEPARTMENT’S WEBSITE AT WWW.SML.TEXAS.GOV. A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT 1-877-276-5550.

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"Any change to this contract must be dated and in writing. Both you and I must sign it. The written change must reference this contract by date, account number, vehicle identification number (VIN), stock number, or by any other reasonable means to be considered part of this contract. No oral changes to this contract are enforceable.

_______________________________ Buyer _______________________________ Co-Buyer"
MOTOR VEHICLE RETAIL INSTALLMENT SALES CONTRACT

(Optional) DATE ________________________________
BUYER ____________________________ SELLER/CReditOR ____________________________
ADDRESS ____________________________ ADDRESS ____________________________
CITY ___________________ STATE ZIP ___________________ CITY ___________________ STATE ZIP ___________________
PHONE ____________________________ PHONE ____________________________

The Buyer is referred to as “I” or “me.” The Seller is referred to as “you” or “your.” This contract may be transferred by the Seller.

PROMISE TO PAY
The credit price is shown below as the “Total Sales Price.” The “Cash Price” is also shown below. By signing this contract, I promise to purchase the motor vehicle on credit according to the terms of this contract. I promise to pay the Amount Financed, Finance Charge, and any other charges in this contract. I promise to make payments according to the Payment Schedule in this contract. If more than one person signs as a buyer, I promise to keep all the promises in this agreement even if the others do not.

I have thoroughly inspected, accepted, and approved the motor vehicle in all respects.

MOTOR VEHICLE IDENTIFICATION

<table>
<thead>
<tr>
<th>Stock No.</th>
<th>Year</th>
<th>Make</th>
<th>Model</th>
<th>Vehicle Identification Number</th>
<th>License Number (if applicable)</th>
<th>New</th>
<th>Demonstrator</th>
<th>Factory</th>
<th>Official/Executive</th>
<th>USED</th>
<th>USE FOR WHICH PURCHASED</th>
</tr>
</thead>
<tbody>
<tr>
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<td></td>
<td>PERSONAL FAMILY OR</td>
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<td></td>
<td>HOUSEHOLD</td>
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<td></td>
<td>BUSINESS OR COMMERCIAL</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>AGRICULTURAL</td>
</tr>
</tbody>
</table>

Trade-in Year ______ Make ______ Model ______ VIN ______ License No. ______

ANNUAL PERCENTAGE RATE
The cost of my credit as a yearly rate. %

FINANCE CHARGE
The dollar amount the credit will cost me. $

Amount Financed
The amount of credit provided to me or on my behalf.

Total of Payments
The amount I will have paid after I have made all payments as scheduled.

Total Sale Price
The total cost of my purchase on credit, including down payment of $

My Payment Schedule will be:

<table>
<thead>
<tr>
<th>Number of Payments</th>
<th>Amount of Payments</th>
<th>When Payments Are Due</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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<td></td>
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</tr>
</tbody>
</table>

Security: You will have a security interest in the motor vehicle being purchased.
Late Charge: [True daily earnings] (Option A) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the past due amount. The law limits the amount of the late charge you can charge on the past due amount to be earned from the due date to the date that it is paid. (Option B) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge on the past due amount at the contract rate. (Option B) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the late amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option C) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment.

Scheduled installment earning method or sum of the periodic balances: (Option A) If I do not pay my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge on the past due amount at the contract rate. (Option B) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the late amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option C) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment.
Prepayment: [True daily earnings] If I pay all that I owe early, I will not have to pay a penalty. [Sum of the periodic balances method] I can pay all that I owe early. If I do so, I can get a refund of part of the Finance Charge.
Additional Information: I will refer to this document for information about nonpayment, default, security interests, and required repayment in full before the scheduled date, and prepayment refunds.
ITEMIZATION OF AMOUNT FINANCED

1. Cash price [Optional additional description: "(including any accessories, services, and taxes)"

2. Downpayment =
   \[ \text{Gross trade-in} - \text{payoff by Seller} = \text{net trade-in} \]
   \[ \text{If not netting add: if negative enter "0" and see Line 4A below}] \]
   \[ + \text{cash} + \text{Mfrs. Rebate} + \text{other (describe)} \]
   \[ \text{Total downpayment} \]

3. Unpaid balance of cash price (1 minus 2)

4. Other charges including amounts paid to others on my behalf (Seller may keep part of these amounts):
   A. Net trade-in payoff [alternative caption: "prior credit or lease balance\(\)"
   B. Cost of physical damage insurance paid to insurance company
   C. Cost of optional coverages with physical damage insurance paid to insurance company
   D. Cost of optional credit insurance paid to insurance company or companies
   E. Debt cancellation agreement fee paid to the Seller
   F. Official fees paid to government agencies
   G. Dealer's inventory tax (\text{optional addition: if not included in cash price})
   H. Sales tax (\text{optional addition: if not included in cash price})
   I. Other taxes (\text{optional addition: if not included in cash price})
   J. Government license and/or registration fees
   K. Government certificate of title fee
   L. Government vehicle inspection fees
   M. Dealer service fee paid to dealer
   N. Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents relating to the sale. A documentary fee may not exceed a reasonable amount agreed to by the parties. This notice is required by law.
   \[ \text{[Option to insert Spanish translation of disclosure here]} \]
   O. Other charges (Seller must identify who is paid and describe purpose)

5. Amount Financed (3 + 4)

\[ \text{[Optional caption: Taxes, title fee, license fee, and any state inspection fee (except for $7.50 of each such inspection fee that will be retained by Seller) will be paid by Seller to government agencies. Documentary fee and dealer service fee will be retained by Seller and the Seller may also retain part or all of the insurance, service contracts, and other charges.]} \]

\[ \text{[Note: A creditor may delete portions of the figure applicable to any insurance premiums or debt cancellation fees that are not financed in the contract and may also delete other inapplicable portions. Under item 4, a creditor may add a line for "other insurance paid to insurance company." ]} \]

<table>
<thead>
<tr>
<th>DEFERRED DOWNPAYMENT(S)</th>
<th>AMOUNT</th>
<th>DATE DUE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>
MODEL CLAUSE FOR PHYSICAL DAMAGE INSURANCE

PROPERTY INSURANCE: I must keep the collision insured against damage or loss in the amount I owe. I must keep this insurance until I have paid all that I owe under this contract. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss.

[Note: The following optional provisions are included for creditors who finance physical damage insurance. Creditors who do not routinely finance physical damage coverage, or who are not financing it in a particular transaction, may delete the remaining disclosures in this figure. A creditor may also delete those portions below that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

If any insurance is included below, policies or certificates from the insurance company will describe the terms, conditions and deductibles.

A. Physical damage insurance. If you obtain physical damage insurance, the coverages, terms and premiums for these terms are set forth below.

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Term in Months</th>
<th>Premium</th>
</tr>
</thead>
<tbody>
<tr>
<td>Collision</td>
<td></td>
<td>☐ $.....</td>
</tr>
<tr>
<td>Comprehensive</td>
<td></td>
<td>☐ $.....</td>
</tr>
<tr>
<td>Fire, Theft, and Combined Additional Coverage</td>
<td></td>
<td>☐ $.....</td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td>☐ $.....</td>
</tr>
</tbody>
</table>

B. Optional coverages with physical damage insurance. If I have chosen this insurance, the premiums for the initial _____ month term are itemized below. [Note: Alternatively, these optional coverages may be disclosed as part of Figure: 773AC 764.88(2).]

☐ $______ Towing and Labor Costs Reimbursement  ☐ $______ Rental Reimbursement

☐ $______ Other:

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. If the premium is for a required coverage, I have the option, for a period of 10 days from the date I receive a copy of this contract, of furnishing that coverage through existing policies of insurance or by obtaining like coverage from any insurer company authorized to do business in Texas.

I agree to purchase the above checked coverages.

Buyer's Signature: ___________________________ Date: __________

---

MODEL CLAUSE FOR OPTIONAL INSURANCE COVERAGES AND DEBT CANCELLATION AGREEMENT

Optional insurance coverages and debt cancellation agreement. The granting of credit will not be dependent on the purchase of either the insurance coverages or the debt cancellation agreement described below. It will not be provided unless I sign and agree to pay the extra cost. [At creditor's option, the following may be added:] The credit approval process will not be affected by whether or not I pay these insurance coverages or the debt cancellation agreement. [Note: If this form is used for commercial transactions, a creditor has the option to bold the language in the preceding paragraph.]

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Term in Months</th>
<th>Premium or Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>GAP*</td>
<td></td>
<td>☐ $.....</td>
</tr>
<tr>
<td>Invol. Unemployment</td>
<td></td>
<td>☐ $.....</td>
</tr>
<tr>
<td>Debt cancellation agreement**</td>
<td></td>
<td>$.....</td>
</tr>
<tr>
<td>Liability Insurance</td>
<td></td>
<td>☐ $.....</td>
</tr>
</tbody>
</table>

$____ per person  $_____ property damage

$____ per accident

*If the motor vehicle is determined to be a total loss, GAP Insurance will pay you the difference between the proceeds of my basic collision policy and the amount I owe on the motor vehicle, minus my deductible. I can cancel that insurance without charge for 10 days from the date of this contract.

**YOU WILL CANCEL CERTAIN AMOUNTS I OWE UNDER THIS CONTRACT IN THE CASE OF A TOTAL LOSS OR THEFT OF THE VEHICLE AS STATED IN THE DEBT CANCELLATION AGREEMENT. I can cancel the debt cancellation agreement without charge for a period of 30 days from the date of this contract, or for the period stated in the debt cancellation agreement, whichever period ends later.

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. A debt cancellation agreement is not insurance and is regulated by the Office of Consumer Credit Commissioner.

For the premiums or fees included above, I want the related optional coverages and debt cancellation agreement.

Buyer's Signature: ___________________________ Date: __________

[Note: A creditor who does not routinely finance optional coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]
TABLES AND GRAPHICS  June 29, 2012  37 TexReg 4969
Percentage Rate. You figured the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance subject to a Finance Charge does not include the late charges, sales tax, or returned check charges.

CONSUMER WARNING

[Scheduled Installment Earnings Method:] Notice to the buyer - I will not sign this contract before I read it or if it contains any blank spaces. I am entitled to a copy of the contract I sign. Under the law, I have the right to pay off in advance all that I owe and under certain conditions may obtain a partial refund of the finance charge. I will keep this contract to protect my legal rights.

[True Daily Earnings Method:] Notice to the buyer - I will not sign this contract before I read it or if it contains any blank spaces. I am entitled to a copy of the contract I sign. Under the law, I have the right to pay off in advance all that I owe and under certain conditions may save a portion of the finance charge. I will keep this contract to protect my legal rights.

BUYER'S ACKNOWLEDGEMENT OF CONTRACT RECEIPT

(OPTION A: If the buyer's signature is dated) I AGREE TO THE TERMS OF THIS CONTRACT, WHEN I SIGN THE CONTRACT, I WILL RECEIVE THE COMPLETED CONTRACT. IF NOT, I UNDERSTAND THAT A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME.

(OPTION B: If the buyer's signature is not dated) I AGREE TO THE TERMS OF THIS CONTRACT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT. I RECEIVED THE COMPLETED CONTRACT ON ________ (MO.) (DAY) (YR.)

(OPTION C: If the buyer's signature is not dated) I SIGNED THIS CONTRACT ON ________ AND A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME.

(OPTION D: If the buyer's signature is dated or not dated) I AGREE TO THE TERMS OF THIS CONTRACT AND ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF IT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT.

[Signature]           [Signature]           [Signature]

Buyer                  Date                  Seller                  Date

Co-Buyer               Date

THIS CONTRACT IS NOT VALID UNTIL YOU AND I SIGN IT

CONSUMER CREDIT COMMISSIONER NOTICE. To contact (insert authorized business name of retail seller, creditor or holder as appropriate) about this account, call (insert telephone number of retail seller, creditor, or holder as appropriate). This contract is subject in whole or in part to Texas law which is enforced by the Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207; www.occ.state.tx.us; (800) 538-1579, and can be contacted relative to any inquiries or complaints.

OTHER TERMS AND CONDITIONS

[Sum of the periodic balances method and scheduled installment earnings method:] HOW YOU CALCULATE MY FINANCE CHARGE

REFUND IF I PREPAY. If I pay in full I may be entitled to a refund of part of the Finance Charge. (Sum of the periodic balances method:) You will figure the Finance Charge refund by using the sum of the periodic balances method as defined by the Texas Finance Commission rule. (Optional: You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge Refund will be computed upon the entire Finance Charge minus the Acquisition Cost. I will not get a refund if it is less than $1.00.) (Additional Option for heavy commercial vehicle. You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge refund will be computed based upon the entire Finance Charge calculated using the sum of the periodic balances method. Then you will subtract the Acquisition Cost from that amount. I will not get a refund if it is less than $1.00.) [Scheduled installment earnings method:] You will figure the Finance Charge refund by the scheduled installment earnings method as defined by the Texas Finance Commission rule. (Optional: You will figure my refund by deducting earned finance charges from the Finance Charge. You will figure earned finance charges by applying a daily rate to the unpaid principal balance as if I paid all my payments on the due date. If I prepaid between payment due dates, you will figure earned finance charges for the partial payment period. You do this by counting the number of days from the due date of the prior payment through the date I prepaid. You then multiply that number of days times the daily rate. The daily rate is 1/365th of the Annual Percentage Rate. You will also add the acquisition cost of $25 (or $150 for a heavy commercial vehicle) to the earned finance charge. I will not get a refund if it is less than $1.00.) [Flexible contract terms designed to accommodate alternative methods:] You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. If this contract is a Regular Payment Contract as defined by the Texas Finance Commission rule, and this contract does not have a term greater than 61 months. If this contract is a Regular Payment Contract or if it has a term greater than 61 months, you will figure the Finance Charge refund using the scheduled installment earnings method as defined by the Texas Finance Commission rule. I will not get a refund if it is less than $1.00.

HOW YOU WILL APPLY MY PAYMENTS [True Daily Earnings Method:] You will apply my payments in the following order:

1. earned but unpaid finance charge; and
2. anything else I owe under this agreement.
HOW LATE OR EARLY PAYMENTS CHANGE WHAT I MUST PAY  

**[True daily earnings method]** You base the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. If I do not timely make all my payments in at least the correct amount, I will have to pay more Finance Charge and my last payment will be more than my final scheduled payment. If I make scheduled payments late, my Finance Charge will be reduced (less). If I make my scheduled payments late, my Finance Charge will increase.

**INTEREST AFTER MATURITY** If I don't pay all I owe when the final payment becomes due, or I do not pay all I owe if you demand payment in full under this contract, I will pay an interest charge on the amount that is still unpaid. That interest charge will be the higher rate of 18% per year or the maximum rate allowed by law, if that rate is higher. The interest charge for this amount will begin the day after the final payment becomes due.

**SPECIAL PROVISIONS FOR BALLOON PAYMENT CONTRACTS.** A balloon payment is a scheduled payment more than twice the amount of the average of my scheduled payments, other than the downpayment, that are due before the balloon payment.

(Paying the balloon payment under Texas Finance Code §348.123(a)) I can pay all I owe when the balloon payment is due and keep my motor vehicle.

**(Option A: Refinancing the balloon payment)** If I buy the motor vehicle primarily for personal, family, or household use, I can enter into a new written agreement to refinance the balloon payment when due without a refinancing fee. If I refinance the balloon payment, my periodic payments will not be larger or more often than the payments in this contract. The annual percentage rate in the new agreement will not be more than the Annual Percentage Rate in this contract. This provision does not apply if my Payment Schedule has been adjusted to my seasonal or irregular income.

**(Option B: Special right to refinance balloon payment under Texas Finance Code §348.123(b)(5)(b))** I can enter into a new agreement to refinance my last installment if I am not in default. I can refinance at an annual percentage rate up to 5 points greater than the Annual Percentage Rate shown in this contract. The rate will not be more than applicable law allows. The new agreement will allow me to refinance the last installment for at least 24 months with equal monthly payments. You and I can also agree to refinance the last installment over another time period or on a different payment schedule.

**AGREEMENT TO KEEP MOTOR VEHICLE INSURED.** I agree to have physical damage insurance covering loss or damage to the vehicle for the term of this contract. The insurance must cover your interest in the vehicle (Optional Language Provision: The insurance must include collision coverage and other comprehensive or fire, theft, and combined additional coverage.)

**YOUR RIGHT TO PURCHASE REQUIRED INSURANCE IF I FAIL TO KEEP THE MOTOR VEHICLE INSURED.** If I fail to give you proof that I have insurance, you may buy physical damage insurance. You may buy insurance that covers my interest and your interest in the motor vehicle, or you may buy insurance that covers your interest only. I will pay the premium for the insurance and a finance charge at the contract rate. If you obtain collateral protection insurance, you will mail notice to my last known address shown in your file.

**PHYSICAL DAMAGE INSURANCE PROCEEDS.** I must use physical damage insurance proceeds to repair the motor vehicle, unless you agree otherwise in writing. However, if the motor vehicle is a total loss, I must use the insurance proceeds to pay what I owe you. I agree that you can use any proceeds from insurance to repair the motor vehicle, or you may reduce what I owe under this contract. If you apply insurance proceeds to the amount I owe, they will be applied to my payments in the reverse order of when they are due. If my insurance on the motor vehicle or credit insurance doesn't pay all I owe, I must pay what is still owed. Once all amounts owed under this contract are paid, any remaining proceeds will be paid to me.

**RETURNED INSURANCE PREMIUMS AND SERVICE CONTRACT CHARGES.** [True daily earnings method] If you get a refund on insurance or service contracts, or other contracts included in the cash price, you will subtract it from what I owe. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me. [Scheduled installment earnings method or sum of the periodic balances] If you get a refund of insurance or service contract charges, you will apply it and the unearned finance charges on it in the reverse order of the payments to as many of my payments as it will cover. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me.

**APPLICATION OF CREDITS.** Any credit that reduces my debt will apply to my payments in the reverse order of when they are due, unless you decide to apply it to another part of my debt. The amount of the credit and all finance charge or interest on the credit will be applied to my payments in the reverse order of my payments.

**TRANSFER OF RIGHTS.** You may transfer this contract to another person. That person will then have all your rights, privileges, and remedies.

**SECURITY INTEREST.** To secure all I owe on this contract and all my promises in it, I give you a security interest in:

- the motor vehicle including all accessories and parts now or later attached (Optional. and any other goods financed in this contract);
- all insurance proceeds and other proceeds received for the motor vehicle;
- any insurance policy, service contract or other contract financed by you and any proceeds of those contracts; and
- any refunds of charges included in this contract for insurance, or service contracts.

This security interest also secures any extension or modification of this contract. The certificate of title must show your security interest in the motor vehicle.

**USE AND TRANSFER OF THE MOTOR VEHICLE.** I will not sell or transfer the motor vehicle without your written permission. If I do sell or transfer the motor vehicle, this will not release me from my obligations under this contract, and you may charge me a transfer fee of up to $25 ($50 for a heavy commercial vehicle). I will promptly tell you in writing if I change my address or the address where I keep the motor vehicle. I will not remove the motor vehicle (Optional: motor vehicle or other collateral) from Texas for more than 30 days unless I first get your written permission.

**CARE OF THE MOTOR VEHICLE.** I agree to keep the motor vehicle free from all liens and claims except those that secure this contract. I will timely pay all taxes, fines, or charges pertaining to the motor vehicle. I will keep the motor vehicle in good repair. I will not allow the motor vehicle to be seized or placed in jeopardy or use it illegally. I must pay all I owe even if the motor vehicle is lost, damaged or destroyed. If a third party takes a lien or claim against or possession of the motor vehicle, you may sell the third party any cost required to clear the motor vehicle from all liens or claims. You may immediately demand that I pay you the amount paid to the third party for the motor vehicle. If I do not pay this amount, you may repossess the motor vehicle and add that amount to the amount I owe. If you do not repossess the motor vehicle, you may still demand that I pay you, but you cannot compute a finance charge on this amount.
DEFAULT I will be in default if:

- I do not pay any amount when it is due;
- I break any of my promises in this agreement;
- I allow a judgment to be entered against me or the collateral; or
- I file bankruptcy, bankruptcy is filed against me, or the motor vehicle becomes involved in a bankruptcy.

If I default, you can exercise your rights under this contract and your other rights under the law.

LATE CHARGE I will pay you a late charge as agreed to in this contract when it accrues.

REPOSSESSION If I default, you may repossess the motor vehicle from me if you do so peacefully. If any personal items are in the motor vehicle, you can store them for me and give me written notice at my last address shown on your records within 15 days of discovering that you have my personal items. If I do not ask for these items back within 31 days from the day you mail or deliver the notice to me, you may dispose of them as applicable law allows. Any accessory, equipment, or replacement part stays with the motor vehicle.

MY RIGHT TO REDEEM If you take my motor vehicle, you will tell me how much I have to pay to get it back. If I do not pay you to get the motor vehicle back, you can sell it or take other action allowed by law. My right to redeem ends when the motor vehicle is sold or you have entered into a contract for sale or accepted the collateral as full or partial satisfaction of a contract.

DISPOSITION OF THE MOTOR VEHICLE If I don't pay you to get the motor vehicle back, you can sell it or take other action allowed by law. You will send me notice at least 10 days before you sell it. You can use the money you get from selling it to pay allowed expenses and to reduce the amount I owe. Allowed expenses are expenses you pay as a direct result of taking the motor vehicle, holding it, preparing it for sale, and selling it. If any money is left, you will pay it to me unless you must pay it to someone else. If the money from the sale is not enough to pay all I owe, I must pay the rest of what I owe you plus interest. If you take or sell the motor vehicle, I will give you the certificate of title and any other document required by state law to transfer the title.

COLLECTION COSTS If you hire an attorney who is not your employee to enforce this contract, I will pay reasonable attorney's fees and court costs as the applicable law allows.

CANCELLATION OF OPTIONAL INSURANCE, DEBT CANCELLATION AGREEMENT, AND SERVICE CONTRACTS This contract may contain charges for insurance, debt cancellation agreement, service contracts, or for services included in the cash price. If I default, I agree that you can claim benefits under these contracts to the extent allowable, and terminate them to obtain refunds of unearned charges to reduce what I owe or repair the motor vehicle.

YOUR RIGHT TO DEMAND PAYMENT IN FULL If I default, or you believe in good faith that I am not going to keep any of my promises, you can demand that I immediately pay all that I owe. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe.

IF YOU DEMAND I PAY ALL I OWE [Sum of the periodic balances method or scheduled installment earnings method.] If you demand that I pay all that I owe, you will give me a credit of part of the Finance Charge as if I had prepaid in full.

SEVERABILITY CLAUSE If any part of this contract is not valid, all other parts stay valid.

LEGAL LIMITATIONS ON YOUR RIGHTS If you don't enforce your rights every time, you can still enforce them later. You will exercise all of your rights in a lawful way. I don't have to pay finance charge or other amounts that are more than the law allows. This provision prevails over all other parts of this contract and all your other acts.

APPLICABLE LAW Federal law and Texas law apply to this contract.

SELLER'S DISCLAIMER OF WARRANTIES Unless the seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the seller makes no warranties, express or implied, on the motor vehicle, and there will be no implied warranties of merchantability or fitness for a particular purpose. This provision does not affect any warranties covering the motor vehicle that the motor vehicle manufacturer may provide.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER. (This provision applies to this contract only if the motor vehicle financed in the contract was purchased for personal, family, or household use.)

The rates of this contract are negotiable. The seller may assign or otherwise sell this contract and receive a discount or other payment for the difference between the rate, charges, or balance.
\ln(\text{total cost}) = 7.08 + 0.02 \ln(\text{distance to nearest central office in feet} + 1)
- 0.15 \ln(\text{number of households + businesses in wire center} + 1)
+ 0.22 \ln(\text{total road feet in wire center} + 1)
+ 0.06 (\ln(\text{number of households + businesses in wire center} + 1))^2
- 0.01 (\ln(\text{number of businesses in wire center} + 1))^2
- 0.07 \ln(\text{(number of households + businesses)/square miles} + 1)
You have the right to an adequate network of preferred providers:
  o If you believe that the network is inadequate, you may file a complaint with the Texas Department of Insurance.
  o If you obtain out-of-network services because no preferred provider was reasonably available, you may be entitled to have the claim paid at the in-network coinsurance rate and your out-of-pocket expenses counted toward your in-network, out-of-network, or general out-of-pocket maximum, as appropriate.

You have the right to obtain advance estimates:
  o of the amounts that the providers may bill for projected services, from your out-of-network provider; and
  o of the amounts that the insurer may pay for the projected services, from your insurer.

You may obtain a current directory of preferred providers at the following website: [website address to be filled out by the insurer or marked inapplicable if the insurer does not maintain an Internet website providing information regarding the insurer or the health insurance policies offered by the insurer for use by current or prospective insureds or group contract holders] or by calling [to be filled out by the insurer] for assistance in finding available preferred providers. If the directory is materially inaccurate, you may be entitled to have an out-of-network claim paid at the in-network level of benefits.

If you are treated by a provider or hospital that is not contracted with your insurer, you may be billed for anything not paid by the insurer.

If the amount you owe to an out-of-network hospital-based radiologist, anesthesiologist, pathologist, emergency department physician, or neonatologist is greater than $1,000 (not including your copayment, coinsurance, and deductible responsibilities) for services received in a network hospital, you may be entitled to have the parties participate in a teleconference, and, if the result is not to your satisfaction, in a mandatory mediation at no cost to you. You can learn more about mediation at the Texas Department of Insurance website: www.tdi.texas.gov/consumer/cpmmediation.html [www.tdi.state.tx.us/consumer/cpmmediation.html].
Texas Department of Insurance Notice

• An exclusive provider benefit plan provides no benefits for services you receive from out-of-network providers, with limited exceptions as described in your policy and below.

• You have the right to an adequate network of preferred providers.
  o If you believe that the network is inadequate, you may file a complaint with the Texas Department of Insurance.

• If your insurer approves a referral for out-of-network services because no preferred provider is available, or if you have received out-of-network emergency care, your insurer must, in most cases, resolve the nonpreferred provider’s bill so that you only have to pay any applicable coinsurance, copay, and deductible amounts. If you received treatment from an out-of-network hospital-based physician who bills you for an amount greater than $1,000 (not including your copayment, coinsurance, and deductible responsibilities), your insurer may require that you participate in a mediation process to resolve the bill.

• You may obtain a current directory of preferred providers at the following website: [website address to be filled out by the insurer or marked inapplicable if the insurer does not maintain an Internet website providing information regarding the insurer or the health insurance policies offered by the insurer for use by current or prospective insureds or group contract holders] or by calling [to be filled out by the insurer] for assistance in finding available preferred providers. If the directory is materially inaccurate, you may be entitled to have an out-of-network claim paid at the in-network level of benefits.
Texas State Affordable Housing Corporation

Draft 2012 Texas Foundations Fund Guidelines and Application Requirements

The Texas State Affordable Housing Corporation (TSAHC) presents for public comment its draft 2012 Texas Foundations Fund Guidelines and Application Requirements. A copy of the draft Guidelines and Application Requirements may be found on TSAHC’s website at www.tshahc.org. The public comment period is Friday, June 15, 2012 through Friday, July 6, 2012.

Written comments may be sent to Katie Howard, Senior Development Coordinator, at 2200 East Martin Luther King Jr. Blvd., Austin, Texas 78702 or by email at khoward@tsahc.org.

TRD-201203140
David Long
President
Texas State Affordable Housing Corporation
Filed: June 15, 2012

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Comptroller of Public Accounts

Notice of Contract Amendments

The Comptroller of Public Accounts (Comptroller) has entered into amendments with several independent contractors to their respective original Professional Services Agreements for Independent Examining Services (Contracts) resulting from Comptroller’s Request for Qualifications 197b (RFQ 197b). The Contracts were awarded as authorized by Chapter 111, Subchapter A, §111.0045 of the Texas Tax Code.

Notice of RFQ 197b was published in the April 30, 2010, issue of the Texas Register (35 TexReg 3526). Notice of Awards was published in the September 17, 2010, issue of the Texas Register (35 TexReg 8523).

Amendments No. 2 to their respective Contracts have been entered into with the following persons or firms:

Paul Hernandez, 1938 Crisfield Drive, Sugar Land, Texas 77479, is extended by Amendment No. 2.

Stites Pybus, LLC, 2925 Cuero Cove, Round Rock, Texas 78681, is extended by Amendment No. 2.

Brenda Maldonado, 2095 Savannah Trace, Beaumont, Texas 77706, is extended by Amendment No. 2.

Stephanie (Clark) Jackson, 2700 Blanchette Street, Beaumont, Texas 77701, is extended by Amendment No. 2.

William R. Smith, 5319 Cerro Vista, San Antonio, Texas 78233, is extended by Amendment No. 2.

Stephen T. Broad, 1218 Gordon Boulevard, San Angelo, Texas 76905, is extended by Amendment No. 2.

Jean Chan, 6119 Jerome Trail, Dallas, Texas 75252, is extended by Amendment No. 2.

Art Koenings, Jr., CPA, 15712 Spillman Ranch Loop, Austin, Texas 78738, is extended by Amendment No. 2.

Homer Max Wiesen, CPA, 1009 Panhandle, Denton, Texas 76201, is extended by Amendment No. 2.

Paul D. Underwood, 6130 Coralridge Drive, Corpus Christi, Texas 78413, is extended by Amendment No. 2.

Terra Hillman, 2174 East Michael Square, Lake Charles, Louisiana 70611, is extended by Amendment No. 2.

Marina Roy Buenaventura, CPA, 4042 Cheena Drive, Houston, Texas 77025-4702, is extended by Amendment No. 2.

Antonio V. Concepcion, 9227 Bristlebrook Drive, Houston, Texas 77083, is extended by Amendment No. 2.

Ruzicka-Reed Partnership, 1555 Glenhill Lane, Lewisville, Texas 75077, is extended by Amendment No. 2.

Max Dwain Martino, PC, 373 1/2 West 19th Street, Suite C-2, Houston, Texas 77008, is extended by Amendment No. 2.

Vernice Seriale, Jr., 11612 Cross Spring Drive, Pearland, Texas 77584, is extended by Amendment No. 2.

Dan A. Northern, 2201 Woodland Hills Lane, Weatherford, Texas 76087, is extended by Amendment No. 2.

Dibrell P. Dobbs d/b/a State Tax Consulting Group, 2906 Timber Gardens Court, Arlington, Texas 76016, is extended by Amendment No. 2.

David Tran d/b/a Lone Star Sales Tax Consulting, 1144 N. Plano Road, Suite 133, Richardson, Texas 75081, is extended by Amendment No. 2.

Cherise D. Collins, 17011 Driver Lane, Sugar Land, Texas 77498, is extended by Amendment No. 2.

D. Smith Consulting, 418 Sonora Drive, Garland, Texas 75043, is extended by Amendment No. 2.

Amendment No. 3 to the original Contract has been entered into with: Garrett State Tax Service, Inc., 1911 Broadway Boulevard, Kilgore, Texas 75662, is extended by Amendment No. 3.

The original term of the Contracts was September 1, 2011 through August 31, 2012. Amendments No. 2 and 3, the subjects of this notice, extend the term of the Contracts through August 30, 2013, with no options to renew.

The total amount of each Contract is based on the size of contract tax examination packages awarded by the Comptroller's Project Manager during the term of each Contract.

TRD-201203262
Jette B. Withers
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: June 20, 2012

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IN ADDITION June 29, 2012 37 TexReg 4977
Notice of Contract Assignment

The Comptroller of Public Accounts (Comptroller) announces the assignment of a financial advisor services contract awarded to Raymond James & Associates, Inc., Preston Commons West, 8117 Preston Road, Suite 600, Dallas, Texas 75225, under Request for Proposals (RFP) #201a issued on February 4, 2011. Effective June 14, 2012, the contract was assigned to George K. Baum, Inc., Preston Commons West, 8117 Preston Road, Suite 300, Dallas, Texas 75225.

The total amount of the contract is $45,775 per Note or Commercial Paper issuance and $7,500 for approved travel expenses. The term of the contract is April 21, 2011, through August 31, 2013.

The notice of RFP was published in the February 4, 2011, issue of the Texas Register (36 TexReg 652). The notice of award was published in the May 6, 2011, issue of the Texas Register (36 TexReg 3027).

TRD-201203271
Jette B. Withers
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: June 20, 2012

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/25/12 - 07/01/12 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/25/12 - 07/01/12 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 07/01/12 - 07/31/12 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 07/01/12 - 07/31/12 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-201203213
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 18, 2012

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 was received from Energy Capital Credit Union, Houston, Texas to amend its Articles of Incorporation relating to principal place of business.

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-201203268
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 20, 2012

Applications for a Merger or Consolidation

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration:

An application was received from Texas Telecom Credit Union (Dallas) seeking approval to merge with Denison District Telephone Credit Union (Denison), with Texas Telecom Credit Union being the surviving credit union.

An application was received from United Community Credit Union (Galena Park) seeking approval to merge with Norman Mathis Credit Union (Houston), with United Community Credit Union being the surviving credit union. In accordance with the Finance Code §122.005(b) and 7 TAC §91.104(b), the Commissioner has the authority to waive or delay public notice of an action.

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-201203268
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 20, 2012

Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration:

An application was received from West Texas Educators Credit Union, Odessa, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in Ector County, Texas, to be eligible for membership in the credit union.

An application was received from Cabot & NOI Employees Credit Union, Pampa, Texas to expand its field of membership. The proposal would permit persons who live, work, or worship within a 10 mile radius of the credit union office located at 1063 N. Sumner, Pampa, Texas 79065, 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.tcud.state.tx.us/applications.html.

37 TexReg 4978 June 29, 2012 Texas Register
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 Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201203267
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 20, 2012

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:

Applications to Expand Field of Membership - Denied
Resource One Credit Union (#1), Dallas, Texas - See Texas Register issue dated February 24, 2012.
Resource One Credit Union (#2), Dallas, Texas - See Texas Register issue dated February 24, 2012.

Applications to Expand Field of Membership - Approved
First Class American Credit Union, Fort Worth, Texas (Amended) - Persons who live, work, attend school, or worship in and businesses located in the City of Fort Worth, Texas.
Space City Credit Union, Houston, Texas (Amended) - Employees of Nexus Health Systems and any of its wholly owned companies.
Texell Credit Union (#1), Temple, Texas - See Texas Register issue dated January 27, 2012.
Texell Credit Union (#2), Temple, Texas - See Texas Register issue dated January 27, 2012.
The Education Credit Union (#1), Amarillo, Texas - See Texas Register issue dated April 27, 2012.
The Education Credit Union (#2), Amarillo, Texas - See Texas Register issue dated April 27, 2012.
Application for a Merger or Consolidation - Approved Houston Highway Credit Union (Houston) and Ada Employees Credit Union (Pearland) - See Texas Register issue dated March 30, 2012.

TRD-201203270
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 20, 2012

Texas Council for Developmental Disabilities

Requests for Proposals
The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for one project to increase the involvement of people with developmental disabilities in existing transportation planning processes so that public transportation systems support the full inclusion and participation of persons with developmental disabilities in the community in which they live.

The TCDD has approved funding for up to $400,000 per year, for up to five years, for the project funded under this announcement. Funds available for this project are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Intellectual and Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by the TCDD and on the availability of funds. Non-federal matching funds of at least ten percent of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least twenty-five percent of total project costs are required for projects in other areas.

Additional information concerning this Request for Proposals (RFP) or more information about TCDD may be obtained through TCDD’s website at http://www.txddc.state.tx.us. All questions pertaining to this RFP should be directed to Joanna Cordry, Planning Coordinator, at (512) 437-5410 or via email to Joanna.Cordry@tcdd.state.tx.us, or to Cynthia Ellison, Senior Grants Specialist, at (512) 437-5436 or via email to Cynthia.Ellison@tcdd.state.tx.us. Application packets must be requested in writing or downloaded from the Internet.

Deadline: One hard copy, with original signatures, and one electronic copy must be submitted. All proposals must be received by TCDD, not later than 4 p.m., Central Time, Wednesday, August 29, 2012, or, if mailed, postmarked prior to midnight on the date specified above. Proposals may be delivered by hand or mailed to TCDD at 6201 East Oltorf, Suite 600, Austin, Texas 78741-7509 to the attention of Jeri Barnard. Faxed proposals cannot be accepted. Electronic copies should be addressed to Jerianne.Barnard@tcdd.state.tx.us.

Proposals will not be accepted after the due date.

Grant Proposers’ Workshops: The Texas Council for Developmental Disabilities will conduct telephone conferences to help potential applicants understand the grant application process and this specific RFP. In addition, answers to frequently asked questions will be posted on the TCDD website. Please check the TCDD website at http://txddc.state.tx.us/grants_projects/rfp_announcements.asp for a schedule of conference calls for this RFP.

TRD-201202964
Roger Webb
Executive Director
Texas Council for Developmental Disabilities
Filed: June 8, 2012

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 July 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.

IN ADDITION June 29, 2012 37 TexReg 4979
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 July 30, 2012. Written comments may also be sent by facsimile 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: Batchelder Construction, Incorporated; DOCKET NUMBER: 2012-0960-WQ-E; IDENTIFIER: RN105499966; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: CENTERGAS FUELS, INCORPORATED dba Centergas Fuels; DOCKET NUMBER: 2011-1814-PST-E; IDENTIFIER: RN102466703 (Facility 1) and RN102459039 (Facility 2); LOCATION: Pampa and Wheeler, Gray and Wheeler County; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), at Facility 1, by failing to provide proper release detection for the piping associated with the underground storage tank (UST) system; 30 TAC §334.8(c)(4)(A)(i) and (5)(B)(ii), at Facility 2, by failing to 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; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), at Facility 2, by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; PENALTY: $4,370; ENFORCEMENT COORDINATOR: John Muennink, (713) 422-8970; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(3) COMPANY: E. I. du Pont de Nemours and Company; DOCKET NUMBER: 2012-0050-1WD-E; IDENTIFIER: RN100225085; LOCATION: La Porte, Harris 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 WQ000047400, Effluent Limitations and Monitoring Requirements Numbers 1 and 2 for Outfall 101, and Effluent Limitations and Monitoring Requirements Number 1 for Outfall 201; by failing to comply with permitted effluent limitations; PENALTY: $91,125; Supplemental Environmental Project offset amount of $36,450 applied to Galveston Bay Foundation - Marsh Mania; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2011-2150-AIR-E; IDENTIFIER: RN102984911; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §106.13 (Standard Exemption 80) and §122.143(4), Federal Operating Permit Number 3369, Special Terms and Conditions Numbers 9 and 10, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions. Since the respondent failed to provide sufficient information on the cause of the incident, the respondent is precluded from asserting an affirmative defense under 30 TAC §101.222; PENALTY: $3,725; Supplemental Environmental Project offset amount of $1,490 applied to Houston - Galveston Area Emission Reduction Credit Organization's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2012-0384-AIR-E; IDENTIFIER: RN102450756; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.715(a) and §122.143(4), Texas Health and Safety Code, §382.085(b), Permit Number 49138, Special Conditions Number 1, Federal Operating Permit (FOP) Number O1870, Special Terms and Conditions (STC) Number 13, FOP Number O1871, STC Number 7, and FOP Number 02044, STC Number 11, by failing to prevent unauthorized emissions. Since the emissions event could have been avoided by better operational practices, the respondent is precluded from asserting the affirmative defense under 30 TAC §101.222; PENALTY: $13,125; Supplemental Environmental Project offset amount of $5,250 applied to Southeast Texas Regional Planning Commission - Southeast Texas Regional Air Monitoring Network Ambient Air Monitoring Station; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: F & N FOOD MARKET ENTERPRISES II, LTD. dba Nickys Food Mart; DOCKET NUMBER: 2012-0281-PST-E; IDENTIFIER: RN101665503; LOCATION: Bryan, Brazos County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 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 per month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain the required UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $11,506; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Grunewald Sandblasting, Incorporated; DOCKET NUMBER: 2012-0400-MLM-E; IDENTIFIER: RN101982825; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: surface coating and dry abrasive blasting; 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 authorization before construction and prior to conducting dry abrasive sandblasting operations; 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization before construction and prior to conducting surface coating operations; 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; 30 TAC §324.4(1) and 40 Code of Federal Regulations (CFR) §279.22(d), by failing to prevent the unauthorized disposal and cleanup of used oil; and 40 CFR §279.22(c)(1), by failing to mark or clearly label one 55-gallon used oil container with the words "Used Oil"; PENALTY: $14,126; ENFORCEMENT COORDINATOR: Trina Griceo, (210) 403-4006;
REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(8) COMPANY: Harris County Hospital District; DOCKET NUMBER: 2012-0520-PST-E; IDENTIFIER: RN100662584; LOCATION: Houston, Harris County; TYPE OF FACILITY: hospital; 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: $1,875; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Henry L. Padgett dba Kountry Korner; DOCKET NUMBER: 2012-0377-PST-E; IDENTIFIER: RN101665610; LOCATION: Marquez, Leon 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 proper release detection for the piping associated with the UST system; PENALTY: $2,630; ENFORCEMENT COORDINATOR: JR Ca, (512) 239-2545; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: HILCO UNITED SERVICES, INCORPORATED; DOCKET NUMBER: 2012-0477-PWS-E; IDENTIFIER: RN101181782; LOCATION: Hill County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(d)(2), by failing to provide increased pressure by means of booster pumps taking suction from ground storage tanks or to obtain an exception by acquiring plan approval by the executive director for booster pumps taking suction from the distribution lines; PENALTY: $1,605; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: Hoodbro Enterprises, Incorporated dba Northgate Chevron; DOCKET NUMBER: 2012-0261-PST-E; IDENTIFIER: RN100579390; LOCATION: Irving, Dallas 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 UST; PENALTY: $5,740; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Lanxess Corporation; DOCKET NUMBER: 2012-0440-AIR-E; IDENTIFIER: RN100825363; LOCATION: West Orange, Orange County; TYPE OF FACILITY: synthetic rubber manufacturing; RULE VIOLATED: 30 TAC §101.20(3), 116.115(b)(2)(F) and 122.143(4), New Source Review Permit Numbers 22508 and PSDTX874, Special Conditions Number 1, Federal Operating Permit Number 02281, Special Terms and Conditions Number 11, and Texas Health and Safety Code, §382.085, by failing to close a bleed valve before process piping was being placed into service in the Cobalt Butadiene Rubber Unit resulting in unauthorized emissions on October 23, 2011, during Incident Number 160926. Because the event could have been avoided by better operating practices, the respondent did not meet the affirmative defense under 30 TAC §101.222; PENALTY: $6,563; Supplemental Environmental Project offset amount of $2,625 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Clean School Buses; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(13) COMPANY: Leedo Manufacturing Company, L.P.; DOCKET NUMBER: 2012-0568-AIR-E; IDENTIFIER: RN100542562; LOCATION: East Bernard, Wharton County; TYPE OF FACILITY: wood cabinet manufacturing; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O1788, General Terms and Conditions, by failing to submit the permit compliance certification within 30 days after the end of the certification period; PENALTY: $2,850; ENFORCEMENT COORDINATOR: John Muennink, (713) 422-8970; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Limestone County; DOCKET NUMBER: 2012-0380-PST-E; IDENTIFIER: RN102270048; LOCATION: Groesbeck, Limestone County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(e)(1), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $6,000; Supplemental Environmental Project offset amount of $4,800 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Abandoned Tire Clean-up; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Majestic Fuel Supplies, LLC dba Vecta Food Store; DOCKET NUMBER: 2012-0534-PST-E; IDENTIFIER: RN101534154; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(e)(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: $3,000; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Marlin Midstream, LLC; DOCKET NUMBER: 2012-0410-AIR-E; IDENTIFIER: RN104708136; LOCATION: Woodville, Tyler County; TYPE OF FACILITY: natural gas production; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to the modification of an existing facility; PENALTY: $5,100; ENFORCEMENT COORDINATOR: Raymond Marlow, P.G., (409) 899-8785; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(17) COMPANY: Mary Lellee Hayre and Thomas Hayre; DOCKET NUMBER: 2012-0322-WR-E; IDENTIFIER: RN103925640; LOCATION: Menard, Menard County; TYPE OF FACILITY: property; RULE VIOLATED: TWC, §11.121 and 30 TAC §297.11, by failing to obtain authorization prior to diverting, storing, impounding, taking, or using state water; PENALTY: $2,500; Supplemental Environmental Project offset amount of $1,000 applied to Trans-Pecos Water and Land Trust - Trans-Pecos Water Rights Acquisition Project;
(18) COMPANY: New A Malik, Incorporated dba AAA 1; DOCKET NUMBER: 2012-0059-PST-E; IDENTIFIER: RN102917614; LOCATION: Kaufman, Kaufman County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: $2,250; ENFORCEMENT COORDINATOR: John Muenink, (713) 422-8970; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Petroleum Wholesale, L.P. dba Summart 422; DOCKET NUMBER: 2012-0241-PST-E; IDENTIFIER: RN101936995; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II vapor space manifold and dynamic back pressure at least once every 36 months; PENALTY: $2,538; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Rex-Hide Industries, Incorporated; DOCKET NUMBER: 2012-0959-WQ-E; IDENTIFIER: RN100544519; LOCATION: Tyler, Smith County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(21) COMPANY: RINZIM INVESTMENTS, INCORPORATED dba Stop N Shop; DOCKET NUMBER: 2012-0453-PST-E; IDENTIFIER: RN102479508; LOCATION: Port Arthur, Jefferson 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 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 §115.245(3) and THSC, §382.085(b), by failing to submit a pre-test notification ten working days in advance of a test; 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 within ten working days of the completion of the tests; 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; 30 TAC §334.10(b), by failing to maintain the required UST records and making them immediately available for inspection upon request by agency personnel; 30 TAC §115.242(3) 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; and 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the face of each gasoline dispensing pump equipped with a Stage II vapor recovery system; PENALTY: $7,079; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: Rockwall Beverage Center, L.P.; DOCKET NUMBER: 2012-0558-PST-E; IDENTIFIER: RN101564623; LOCATION: Dallas, Dallas 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 (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; PENALTY: $4,475; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: STARLINE, INCORPORATED dba A to Z Discount Grocery; DOCKET NUMBER: 2012-0063-PST-E; IDENTIFIER: RN102230513; LOCATION: Malakoff, Henderson 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 proper release detection for the pressurized piping associated with the underground storage tank; PENALTY: $2,006; ENFORCEMENT COORDINATOR: John Muenink, (713) 422-8970; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(24) COMPANY: Superior USA Carwash, Incorporated dba Superior Car Wash; DOCKET NUMBER: 2012-0208-PST-E; IDENTIFIER: RN101377430; LOCATION: Houston, Harris County; TYPE OF FACILITY: car wash 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; PENALTY: $750; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2012-0358-AIR-E; IDENTIFIER: RN100225945; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.715(a), New Source Review Permit Numbers 20432 and PSD-TX-994M1, Special Condition Chapter III Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions during an event that occurred from September 9, 2011 - September 11, 2011 (Incident Number 159031). Since this emissions event could have been avoided by better operational practices, the respondent is precluded from asserting an affirmative defense under 30 TAC §101.222; PENALTY: $50,000; Supplemental Environmental Project offset amount of $25,000 applied to Houston - Galveston Area Emission Reduction Credit Organization's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Trieu Minh Nguyen dba CCNC; DOCKET NUMBER: 2012-0336-PST-E; IDENTIFIER: RN101885473; LOCATION: Borger, Hutchinson 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 per 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: $2,380; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(27) COMPANY: United Fuel & Energy Corporation; DOCKET NUMBER: 2012-0529-PST-E; IDENTIFIER: RN102459534; LOCATION: Andrews, Andrews County; TYPE OF FACILITY: property with three inactive underground storage tanks (USTs); RULE VIO-
LATED: 30 TAC §334.54(b)(2) and (c)(2) and TWC, §26.3475(c)(1), 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 and by failing to monitor for releases a UST system which contained regulated substances; and 30 TAC §334.7(d)(3), by failing to notify the agency of the change or additional information regarding the UST system within 30 days from the date of the occurrence of the change or addition; PENALTY: $3,751;

ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(28) COMPANY: Worsham-Steed Gas Storage, LLC; DOCKET NUMBER: 2012-0599-AIR-E; IDENTIFIER: RN102202520; LOCATION: Perrin, Jack County; TYPE OF FACILITY: oil and gas processing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(B), Federal Operating Permit Number O-02488/General Operating Permit Number 514, Site-wide Requirements (b)(2), and Texas Health and Safety Code, §382.085(b), by failing to submit a semi-annual deviation report; PENALTY: $2,475; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(29) COMPANY: WRL GENERAL CONTRACTORS LTD; DOCKET NUMBER: 2012-0961-WQ-E; IDENTIFIER: RN106363674; LOCATION: Brownsboro, Henderson County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague, Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(30) COMPANY: WTG Gas Processing, L.P.; DOCKET NUMBER: 2012-0294-AIR-E; IDENTIFIER: RN100211473; LOCATION: Coaahoma, Howard County; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review (NSR) Permit Number 20137, Special Conditions (SC) Number 4, Federal Operating Permit (FOP) Number O3180, Special Terms and Conditions (STC) Number 1.A., and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain oxygen (O2) concentrations at or above 5% in the Tail Gas Incinerator stack; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 5301, SC Number 6.A., FOP Number O3180, STC Number 1.A., and THSC, §382.085(b), by failing to monitor with a continuous sensor the O2 content at the inlet of the catalytic converter of the engine identified as emission point number CM-21; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O3180, General Terms and Conditions and STC Number 1.A., and THSC, §382.085(b), by failing to report all instances of deviations in the semi-annual deviation report; PENALTY: $5,462; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 9900 West IH 20, Suite 100, Midland, Texas 79706, (432) 570-1359.

TRD-201203182

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality

Filed: June 18, 2012

Enforcement Orders

An agreed order was entered regarding Black Bear Energy Services, LLC, Docket No. 2011-0147-AIR-E on June 11, 2012 assessing $4,200 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 Longhorn Horizon, Inc. dba Star One, Docket No. 2011-0478-PST-E on June 11, 2012 assessing $2,500 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 Adnan Najm dba Sunmart 352, Docket No. 2011-0598-PST-E on June 11, 2012 assessing $3,044 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 Keyman Corporation and Ravindra Bhakta dba Keyman Corporation, Docket No. 2011-0724-MWD-E on June 11, 2012 assessing $6,360 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, 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 Edwin Moudry dba Braesmain Texaco, Docket No. 2011-0858-PST-E on June 11, 2012 assessing $2,629 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 Lee Ann Farrell, Docket No. 2011-0910-MLM-E on June 11, 2012 assessing $2,784 in administrative penalties with $1,584 deferred.

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 Seoung Woo Lee dba Diamond Shamrock, Docket No. 2011-0979-PST-E on June 11, 2012 assessing $2,550 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 Universal Enterprises, Inc. dba Handi Plus 19, Docket No. 2011-1000-PST-E on June 11, 2012 assessing $3,098 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.

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 Lummus Technology Inc. dba CDTECH, Docket No. 2011-1033-IHW-E on June 11, 2012 assessing $4,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHEMICAL RESEARCH & LICENSING COMPANY dba CDTECH, Docket No. 2011-1034-IHW-E on June 11, 2012 assessing $4,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Two Pillars Investments, Inc. dba Davis Quick Stop, Docket No. 2011-1397-PST-E on June 11, 2012 assessing $3,250 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 5 Star Diamond, LLC dba Diamond Mart, Docket No. 2011-1242-PST-E on June 11, 2012 assessing $4,906 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike 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 Benton Rainey dba Delta Family Mart, Docket No. 2011-1363-PST-E on June 11, 2012 assessing $2,629 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 Trevor J. Willhite dba C&C Snack & Gas 2, Docket No. 2011-1397-PST-E on June 11, 2012 assessing $3,104 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 Alberto Garza and Ruby Lee Garza, Docket No. 2011-1405-MLM-E on June 11, 2012 assessing $7,500 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 QUICK AL, INC. dba Quick AIs Truck Stop, Docket No. 2011-1735-PST-E on June 11, 2012 assessing $2,550 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joel Cordero, 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 Mike L. Mayfield dba Mayfield Septic Cleaning, Docket No. 2011-1749-SLG-E on June 11, 2012 assessing $1,238 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, 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 MISTRY ENTERPRISES INC. dba Highland Food, Docket No. 2011-1797-PST-E on June 11, 2012 assessing $2,765 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 SYDNI INC. dba AM Mini Mart 12, Docket No. 2011-1848-PST-E on June 11, 2012 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike 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 LAMA ENTERPRISES, INC. dba L & M Superette 4, Docket No. 2011-1850-PST-E on June 11, 2012 assessing $3,570 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. Alexander, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WINDWATER INC. dba 1 Reveille Food Store, Docket No. 2011-1852-PST-E on June 11, 2012 assessing $2,550 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, 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 ANISA BUSINESS, LLC dba The Corner Store, Docket No. 2011-1853-PST-E on June 11, 2012 assessing $2,550 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joel Cordero, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.


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.
Code, 30 Texas Administrative Code Chapter 293, and the procedural rules of the TCEQ. Fort Bend County Municipal Utility District No. 169 is a Master Utility District (MaUD) for the Cross Creek Ranch development and provides regional park and recreational services to the land within its service area through construction of MaUD facilities. The internal municipal utility districts (MUDs) within the Cross Creek Ranch development each have a contract and agree to pay Park Construction Charges (an impact fee) to the MaUD based on the region or service area to which park and recreational services are provided. The MaUD must calculate the amount of the impact fee it charges to the internal MUDs. The impact fee application and supporting information are available for inspection and copying during regular business hours in the Utilities and Districts Section of the Water Supply Division, Third Floor of Building F (in the TCEQ Park 35 Office Complex located between Yager and Braker Lanes on North IH-35), 12100 Park 35 Circle, Austin, Texas 78753.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-201203278
Bridge C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 20, 2012

Notice of Minor Amendment

APPLICATION. Waste Control Specialists LLC, P.O. Box 1129, Andrews, Texas 79714 has applied to the Texas Commission on Environmental Quality (TCEQ) for two minor amendments of Radioactive Material License No. R04971. Radioactive Material License No. R04971 authorizes receipt of radioactive waste from other persons and processing and storage of radioactive waste. Waste Control Specialists LLC (WCS) conducts processing and storage of radioactive and hazardous waste, the disposal of hazardous waste and by-product material, and has a license to dispose of low level radioactive waste. The first amendment application requested to replace their current compactor Model 55R RAMFLAT with a Container Products Corporation Model B-1000 Box Compactor System which will require the modification of the ventilation system of the Mixed Waste Treatment Facility. After issuance of this amended license, the Model B-1000 box compactor will be authorized to be installed and operated for waste processing with specific criteria stated in the license for this installation and operation. The second amendment application requested to modify the LSA pad. After issuance of this amended license, WCS will be authorized to modify the LSA pad and to perform void filling of containerized low level radioactive waste placed on the LSA pad in a modular concrete canister for disposal in the Compact Waste Facility. The facility is located one mile north of State Highway 176, 250 feet east of the Texas and New Mexico State Line (30 miles west of Andrews, TX) in Andrews County, Texas. The applications were submitted to the TCEQ on July 15, 2011 and on May 4, 2012. The following link to an electronic map of the facility’s general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=-32.4425&lng=-103.063055&zoom=13&type For an exact location, refer to the application. The TCEQ Executive Director has completed the technical review of the application and prepared a draft license. The draft license, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this license, if issued, meets all statutory and regulatory requirements. The license amendment request, the Executive Director’s technical summary, and amended draft license are available for viewing and copying at the TCEQ’s central office in Austin, Texas and at the Andrews County Library located at 109 Northwest First Street in Andrews, Texas.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the application. A public meeting is not a contested case hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments.

EXECUTIVE DIRECTOR ACTION. The application is subject to Commission rules which direct the Executive Director to act on behalf of the Commission and provide authority to the Executive Director to issue final approval on this application for a minor amendment after consideration of all timely comments submitted on the application.

MAILING LIST. If you submit public comments or a request for reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin,
Notice of Proposed Amendment and Renewal of a General Permit Authorizing the Discharge of Wastewater TXG340000

The Texas Commission on Environmental Quality (TCEQ) is proposing to reissue Texas Pollutant Discharge Elimination System (TPDES) General Permit TXG340000, which authorizes the discharge of facility wastewater, contact storm water, and storm water associated with industrial activities into or adjacent to water in the state from petroleum bulk stations and terminals (PBSTs). The proposed general permit applies to the entire state of Texas. General permits are authorized by §26.040 of the Texas Water Code.

PROPOSED GENERAL PERMIT. The executive director has prepared a draft renewal with amendments of an existing general permit that authorizes the discharge of facility wastewater, contact storm water, and storm water associated with industrial activities into or adjacent to water in the state from PBSTs. No significant degradation of high quality waters is expected and existing uses will be maintained and protected. The executive director proposes to require regulated dischargers to submit a Notice of Intent (NOI) to obtain authorization for discharges.

The executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to Coastal Coordination Council (CCC) regulations, and has determined that the action is consistent with applicable CMP goals and policies.

A copy of the proposed general permit and fact sheet are available for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ Austin office, at 12100 Park 35 Circle, Building F. These documents are also available at TCEQ's sixteen (16) regional offices and on the TCEQ website at http://www.tceq.texas.gov/permitting/wastewater/general/index.html.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting about this proposed general permit. The purpose of a public meeting is to provide the opportunity to submit written or oral comments or to ask questions about the proposed general permit. Generally, the TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the proposed general permit or if requested by a local legislator. A public meeting is not a contested case hearing.

Written public comments must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 within 30 days from the date this notice is published in the Texas Register.

APPROVAL PROCESS. After the comment period, the executive director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least ten (10) days before the scheduled TCEQ meeting when the commission will consider approval of the general permit. The commission will consider all public comment in making its decision and will either adopt the executive director's response or prepare its own response. The commission will issue its written response on the general permit at the same time the commission issues or denies the general permit. A copy of any issued general permit and response to comments will be made available to the public for inspection at the agency's Austin and regional offices. A notice of the commission's action on the proposed general permit and a copy of its response to comments will be mailed to each person who made a comment. Also, a notice of the commission's action on the proposed general permit and the text of its response to comments will be published in the Texas Register.

MAILING LISTS. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: (1) the mailing list for this specific general permit; (2) the permanent mailing list for a specific applicant name and permit number; and/or (3) the permanent mailing list for a specific county. Clearly specify the mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address above. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

INFORMATION. If you need more information about this general permit 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: http://www.tceq.texas.gov.

Further information may also be obtained by calling the TCEQ Water Quality Division, Industrial Permits Team, at (512) 239-4671.

Si desea información en español, puede llamar 1-800-687-4040.

Texas Commission on Environmental Quality
Chief Clerk
Filed: June 20, 2012

Notice of Public Meeting on the Archem/Thames Chelsea State Superfund Site

The executive director of the Texas Commission on Environmental Quality (TCEQ) is issuing this public notice of intent to take no further action at the Archem/Thames Chelsea State Superfund Site (Site) and to delete the Site from the Texas Superfund Registry. The Texas Superfund Registry is the list of state Superfund sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The TCEQ is proposing this deletion because it has determined that the Site no longer presents such an endangerment. Remedial actions at the Site have been completed and based on the Remedial Action report, the chemicals of concern at the Site pose no significant present or future risk to humans or the environment based on commercial/industrial land use. This combined notice was also published in the Houston Chronicle on June 29, 2012. The Site was proposed for listing on the Texas Superfund Registry in the May 4, 2001, issue of the Texas Register (26 TexReg 3413). The
Site, including all land, structures, appurtenances, and other improvements, is approximately ten acres and is located at 13103 Conklin Lane, Houston, Harris County, Texas. The Site also includes any areas where hazardous substances had come to be located as a result, either directly or indirectly, of releases of hazardous substances from the Site.

The Site is a former specialty chemical manufacturing facility where a wide range of chemicals and catalysts were used in manufacturing and processing operations. The Site was operated from 1961 until 1991. Operations ceased after the Thames Chelsea Chemical Company USA abandoned the Site. The Texas Water Commission (a predecessor of TCEQ), the United States Environmental Protection Agency, and some Potentially Responsible Parties performed removal actions in the 1990s to address the immediate concerns from the chemicals stored in drums and above ground storage tanks.

The structures left at the abandoned Site included an office and warehouse building, concrete foundations in the former process areas, a sludge drying bed, two land farm areas, and containment areas associated with the former above ground storage tanks. Two surface impoundments containing wastewater from the former operations were located at the northeastern portion of the Site. In addition, pallet piles, metal scraps and debris from the demolition activities were strewn throughout the facility.

The TCEQ conducted the remedial investigation in five phases starting from April 2002 to July 2005. The purpose of the remedial investigation was to determine the nature and extent of the contaminants at the Site. The chemicals of concern at the Site, whose concentrations exceeded the applicable Protective Concentration Levels included metals (antimony, mercury, and lead), volatile organic compounds (benzene, toluene, and tetrahydrofuran) and semi-volatile organic compounds (2-nitroaniline, and furfural). The groundwater at the Site was designated as Class 3 based on the yield and it was not contaminated. The water in the East Impoundment had total organic carbon above the discharge criteria issued by the TCEQ Water Quality Division.

The TCEQ conducted a feasibility study from December 2004 to August 2005 to evaluate potential remedies for the Site. The selected remedy for the contaminated soil was excavation and offsite disposal followed by backfilling of the excavated areas. The water from the East Impoundment would be treated to meet the total organic carbon criteria and would be discharged into the Harris County flood control ditch located south of the Site.

The remedial design for this Site was completed between August 2009 and May 2010. The remedial action began in September 2010. During the remedial action 300 tons of the land farm soil was excavated and transported to the Coastal Plains Refuse Derived Fuel Landfill in Alvin, Texas as a Class I non-hazardous material. The contaminated soil was excavated throughout the Site. Approximately 2,700 tons of Class I non-hazardous waste and approximately 4,200 tons of Class II non-hazardous waste were transported to the Coastal Plains Refuse Derived Fuel Landfill in Alvin, Texas. The impoundment water was filtered and treated by an activated carbon filter before being discharged into the flood control ditch. In total 764,000 gallons of water were treated and discharged. The sediment at the bottom of the impoundments was stabilized by blending with sodium polyacrylate, an absorbent polymer. The treated sediment was sampled and transported to the landfill as Class I non-hazardous waste. The excavated areas were backfilled and covered with vegetation.

An industrial water well identified during the remedial action was sampled five times. The samples were analyzed for metals, volatile organic compounds and semi-volatile organic compounds, including the site chemicals of concern. The water well was determined not to be impacted and the water well was plugged and abandoned. No post completion care is necessary.

As a result of the remedial actions that have been performed at the Site, the TCEQ has determined that the Site no longer presents an imminent and substantial endangerment to human health and safety and the environment. The fence will remain at the Site to deter illegal dumping. Therefore, no further action is necessary at the Site and the Site is eligible for deletion from the Texas Superfund Registry of Superfund sites as provided by 30 TAC § 335.344(e).

The TCEQ will hold a public meeting to receive comments on the proposed deletion of the Site and the determination to take no further action. This public meeting is not a contested case hearing under Texas Government Code, Chapter 2001. The public meeting is scheduled for Thursday, August 2, 2012, at the San Jacinto College - South Campus, 13735 Beamer Road, Room S-12.101 (Kaleidoscope Room) Houston, Texas starting at 7:00 p.m.

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m. on August 1, 2012, one day before the date of the meeting, and should be sent in writing to the TCEQ at 13087, P.O. Box 12100, Austin, Texas 78711-3087 or by facsimile (512) 239-2450. The public comment period for this action will end at the close of the public meeting on August 2, 2012.

A portion of the record for this Site, including documents pertinent to the proposed deletion of the Site, is available for review during regular business hours at the Bracewell Branch Library, 10115 Klek-ley, Houston, Texas, (832) 393-2580. Copies of the complete public record file may be obtained during regular business hours at the TCEQ's Records Management Center, Building E, First Floor, Records Customer Service, MC 199, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the TCEQ at (800) 633-9363. Requests should be made as far in advance as possible.

For further information regarding this meeting, please call Mr. John Flores, TCEQ Community Relations, at (800) 633-9363.

TRD-201203252
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality

Filed: June 19, 2012

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Notice of Request for Public Comment and Notice of Public Meetings for an Implementation Plan

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment a draft Implementation Plan concerning the 72 Total Maximum Daily Loads (TMDLs) for bacteria in the Greater Houston Area. The TCEQ will conduct four public meetings to receive comments on the draft Implementation Plan.

The purpose of the public meetings is to provide the public an opportunity to comment on the draft Implementation Plan for bacteria in the 72 assessment units (AUs) comprising 60 segments in the ten-county Houston metropolitan area. The Implementation Plan is a flexible
tool that the governmental and non-governmental agencies involved in TMDL implementation will use to guide their program management. The purpose of the public meeting is to provide the public an opportunity to comment on the draft Implementation Plan. The commission requests comment on each of the major components of the Implementation Plan: description of control actions and management measures, implementation strategy and tracking, review strategy, and communication strategy. After the public comment period, TCEQ may revise the draft Implementation Plan, if appropriate. The final Implementation Plan will then be considered for approval by the commission. Upon approval of the Implementation Plan by the commission, the Implementation Plan will be made available on the TCEQ Web site.

The four public comment meetings for the draft Implementation Plan will be held on the following dates: July 10, 2012, at 10:30 a.m. at the East Montgomery County Improvement District, 21575 United States Highway 59 North, Special Events Room, New Caney, Texas 77357; July 10, 2012, at 6:30 p.m. at the Westside Event Center, 2150 Country place Parkway, Pearland, Texas 77584; July 11, 2012, at 10:30 a.m. at the Waller Independent School District Administration Building, District Board Room, 2214 Waller Street, Waller, Texas 77484; and July 11, 2012, at 6:30 p.m. at the Houston-Galveston Area Council, 3555 Timmons Lane, Houston, Texas 77027.

At these meetings, individuals have the opportunity to present oral statements when called upon in order of registration. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all public comments have been received.

Written comments should be submitted to Chip Morris, Water Quality Planning Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1414. Comments may be submitted electronically to www5.tceq.texas.gov/rules/ecomments by midnight on July 30, 2012, and should reference the Implementation Plan for 72 Total Maximum Daily Loads for Bacteria in the Houston-Galveston Region.

For further information regarding the proposed Implementation Plan, please contact Chip Morris at (512) 239-6686 or Chip.Morris@tceq.texas.gov. Copies of the draft Implementation Plan will be available and can be obtained via the commission's Web site at: www.tceq.texas.gov/environmentalquality/tmdl/tmdlnews.html or by calling (512) 239-6682.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the commission at (512) 239-6682. Requests should be made as far in advance as possible.

TRD-201203183
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 18, 2012

Notice of Water Quality Applications

The following notices were issued on June 8, 2012 through June 15, 2012.

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.

IN ADDITION June 29, 2012 37 TexReg 4989
1.0 mile north and 0.5 mile west of the intersection of U.S. Highway 60 and State Highway 213 in Lipscomb County, Texas 79046.

THE CITY OF OYSTER CREEK has applied for a renewal of TPDES Permit No. WQ0011837001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located at 2514 East Highway 332, approximately 1.6 miles southeast of the intersection of State Highway 332 and Farm-to-Market Road 523, at the intersection of State Highway 332 and the U.S. Corps of Engineers Flood Control levee on the west side of the levee in Brazoria County, Texas 77541.

HOUSHANG SOLHJOU has applied for a renewal of TPDES Permit No. WQ0012261001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located at 415 Carby Street, approximately 2,400 feet east-northeast of the intersection of Airline Drive and Carby Street, north of the City of Houston in Harris County, Texas 77037.

CITY OF CONROE has applied for a renewal of TPDES Permit No. WQ0013766001, 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 12305 Longmire Cove, approximately 0.5 mile northeast of Lake Conroe Dam and 0.75 mile west of Longmire Road in Montgomery County, Texas 77304.

TEXAS H2O INC has applied for a renewal of TPDES Permit No. WQ0013786001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 42,000 gallons per day. The facility is located adjacent to Lake Granbury, approximately two miles north of the intersection of Farm-to-Market Road 2425 and Farm-to-Market Road 3210 in Hood County, Texas 76048.

TOWN OF BAYSIDE has applied for a renewal of TPDES Permit No. WQ0013892001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 64,200 gallons per day. The facility is located between Autry Road and Vega Road, approximately 1.1 miles southwest of the intersection of 3rd Street and State Route 136 in Refugio County, Texas 78340.

ARROWHEAD RANCH UTILITY COMPANY LLC has applied for a renewal of TCEQ Permit No. WQ0014824001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 125,000 gallons per day via non-public access subsurface drip irrigation system with a minimum area of 29 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 2303 West Highway 290, Dripping Springs, in Hays County, Texas 78620.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a renewal of TPDES Permit No. WQ0014854001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 14,000 gallons per day. The facility is located at 14025 Interstate Highway 45 East, approximately 2.8 miles southeast of the intersection of State Highway 14 and Interstate Highway 45 (IH-45), south of Richland in Navarro County, Texas 76681.

CYPRESS HILLS LIMITED has applied for a new permit, Proposed TCEQ Permit No. WQ0015020001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 12,500 gallons per day via non-public access low pressure dosing of 5.74 acres of non-public access land. The wastewater treatment facility and disposal site are located at 22049 Farm-to-Market Road 1995, approximately 5,446 feet east-southeast of the intersection of Farm-to-Market Road 1995 and County Road 424, and approximately 2,280 feet north-northwest of the intersection of Farm-to-Market Road 1995 and County Road 422 in Smith County, Texas 75771.

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.

KINDER MORGAN PETCOKE LP 405, which operates Rainbow Terminal Pet coke Handling Facility, has applied for a minor amendment to TPDES Permit No. WQ0004874000 to authorize a change in the description of the effluent sampling location of Outfall 001. The existing permit authorizes the discharge of storm water runoff, dust suppression water, dock reclaim water, and equipment wash water at an intermittent and flow variable rate via Outfall 001. The facility is located at highway 366 and 32nd Street, Jefferson County, Texas.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY has initiated a minor amendment of TPDES Permit No. WQ0010143003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,367,000 gallons per day, to remove the reporting requirement for Total Phosphorus, Total Dissolved Solids, and Nitrate-Nitrogen on page 2 of the permit, which were included by error. The permit remains the same as the one issued March 21, 2012 with the correction of the permit. The facility is located at 2300 Old Malakoff Highway, south of Walnut Creek and approximately four miles southwest of the intersection of Prairievile and Corsicana Streets in the City of Athens, Henderson County, Texas 75751.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY has initiated a minor amendment of TPDES Permit No. WQ0014413001, which authorizes the discharge of treated domestic wastewater at an annual daily average flow not to exceed 1,400,000 gallons per day, to authorize a correction to the dechlorination requirement on page 2 of the permit. The facility is located one mile south of U.S. Expressway 83 on Guadalupe Flores Road and approximately 1,000 feet east of Guadalupe Flores Road in Hidalgo County, Texas 78595.

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.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201203275
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 20, 2012

Texas Ethics Commission
List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800.

Deadline: Monthly Report due February 6, 2012, for Committees
Gina M. Gabriano, Alliance of Conservative Texans, 5040 Lorraine Dr., Frisco, Texas 75034

Deadline: Monthly Report due March 5, 2012, for Committees
Gina M. Gabriano, Alliance of Conservative Texans, 5040 Lorraine Dr., Frisco, Texas 75034
Deadline: Monthly Report due April 5, 2012, for Committees
Gina M. Gabriano, Alliance of Conservative Texans, 5040 Lorraine Dr., Frisco, Texas 75034

Deadline: 30-Day Pre-Election Report due April 30, 2012, for Candidates and Officeholders
Jose A. Campos, 1502 Westmont Dr., Apt.3, Weslaco, Texas 78572
Fernando Castillo, 1200 E. 2nd St., San Juan, Texas 78589
Veronica Farias, 3433 Burgundy Dr., Brownsville, Texas 78526
Miguel "Mike" Herrera, 500 E. San Antonio, Room 1101, El Paso, Texas 79901
Jose M. "J.M." Lozano, 727 Arroyo Dr., Kingsville, Texas 78363
Matthew D. Melton, 211 Bent Creek Dr., Waxahachie, Texas 75165
Daniel Moreno, 3907 Agassi Dr., Weslaco, Texas 78596
James C. Mosser, 17110 Dallas Pkwy., Ste. 290, Dallas, Texas 75248
Philip E. Mullin, 1790 Lee Trevino, Ste. 214, El Paso, Texas 79936
Rod Ponton, 2301 N. Hwy. 118, Alpine, Texas 79830
Omar S. Rivero, 400 Mann St., Ste. 709, Corpus Christi, Texas 78401
Rebecca E. RuBane, 847 E. Harrison St., Brownsville, Texas 78520
Frank Salazar, 15721 Garlang St., Channelview, Texas 77530

Deadline: Personal Financial Statement due April 18, 2012
Jacqueline Acquistapace, 4010 Lotus Dr., Pearland, Texas 77584
Sam Arechar, 3016 Pritchett Dr., Irving, Texas 75061
Christopher D. Cristal, 226 E. Russell Pl., San Antonio, Texas 78212
Joey G. Dauben, P.O. Box 5268, Mabank, Texas 75147
Bruce Hermann, 217 Sam Davis Rd., Argyle, Texas 76226
Miguel "Mike" Herrera, 4410 Trowbridge, El Paso, Texas 79903
Jose M. "J.M." Lozano, 727 Arroyo Dr., Kingsville, Texas 78363
Matthew D. Melton, 211 Bent Creek Dr., Waxahachie, Texas 75165
G. C. Molison, P.O. Box 31546, Houston, Texas 77231
Alfred Molison Jr., P.O. Box 31546, Houston, Texas 77231
Sergio C. Mora Jr., 119 W. Village, Laredo, Texas 78041
Ronald E. Reynolds, 6140 Hwy. 6 South #233, Missouri City, Texas 77459
Omar S. Rivero, 13641 Camino De Oro Ct., Corpus Christi, Texas 78418
Frank Salazar, 15721 Garlang St., Channelview, Texas 77530
Roland E. Sledge, 3620 Sunset Blvd., Houston, Texas 77005
Michael Joseph Spanos, #933 2400 Waterview Pkwy., Ste. 100, Richardson, Texas 75080
Angela M. Tucker, 1515 Heritage Dr., Ste. 104, McKinney, Texas 75069
TRD-201203086

David Reisman
Executive Director
Texas Ethics Commission
Filed: June 14, 2012

General Land Office
Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 8, 2012, through June 15, 2012. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on June 20, 2012. The public comment period for this project will close at 5:00 p.m. on July 20, 2012.

FEDERAL AGENCY ACTIONS:

Applicant: TGS Development; Location: The project site is located in the Port Arthur Canal, at 2500 Martin Luther King Drive, in Port Arthur, Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Arthur South, Texas. NAD 83, Latitude: 29.822500 North; Longitude: -93.95556 West. Project Description: The applicant proposes to construct and dredge a 27.60-acre barge docking facility and pipeline. The applicant proposes to mechanically and hydraulically dredge the berth to a uniform depth of -40 feet below mean low water, plus a 2-foot over dredge for advance maintenance. The applicant also proposes to construct a 36-inch diameter, 3.1-mile pipeline, extending from the proposed basin to a location just west of West 7th Street in Port Arthur. The applicant states that they believe compensatory mitigation should not be required because permanent impacts are minor, resulting from construction of pipeline support structures, and that impacted wetlands are dominated by invasive or non-native species. CMP Project No.: 12-0755-F1 Type of Application: U.S.A.C.E. permit application #SWG-2011-01123 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project will be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Port of Houston Authority; Location: The project is located in Galveston Bay, at the Bayport Ship Channel, in Chambers County and Harris County, Texas. The project can be located on the U.S.G.S. quadrangle maps entitled: Bacliff, Texas; League City, Texas; and Morgans Point, Texas. NAD 83, Latitude: 29.614 North; Longitude: -94.99 West. Project Description: The applicant proposes to use a hydraulic pipeline dredge to deepen and widen the existing Bayport Ship Channel (BSC), deepen the Turning Basin (TB), deepen a portion of the Bayport Flare (Flare), and place the new work (construction) dredged material and maintenance dredged material in a proposed beneficial use (BU) site and/or in existing dredged material placement areas (PAs). The proposed channel improvements are located entirely in open water and unvegetated shallow bay bottom, and would not im-
pact any wetlands or the special aquatic sites. The proposed channel improvements would convert approximately 68 acres in Galveston Bay and 38.5 acres in the land cut portion of the BSC, where the channel would be widened and deepened, of shallow unvegetated bottom benthic habitat to deeper water benthic habitat. The proposed channel improvements would impact approximately 4.6 acres of oyster habitat. Oyster habitat mitigation for these impacts is proposed at Fisher’s Reef in Trinity Bay, Chambers County, Texas. CMP Project No.: 12-0758-F1 Type of Application: U.S.A.C.E. permit application #SWG-2011-01183 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project will be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Kirby Inland Marine; Location: The project site is located at the junction of Old River and the San Jacinto River in Channelview, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: TX-Highlands, Texas. NAD 83, Latitude: 29.7897 North; Longitude: -95.0691West. Project Description: The applicant proposes to use a combination of hydraulic and mechanical dredging techniques to deepen an existing, previously authorized barge fleeting area from -12-foot Mean Low Tide (MLT) to -16-foot MLT. The area to be dredged is 5.7 acres and would require the displacement of approximately 12,000 cubic yards of dredge material to achieve the desired -16-foot MLT depth. The applicant is requesting authorization to place the dredge materials in the following Dredge Material Placement Areas: Dezavalla, Glendale, House Tract, Stimson Tract, Clinton, Beltway 8 Tract, Lost Lake, Peggy Lake, Alexander Island, and Spilman Island. The applicant is requesting authorization for 10 years of maintenance dredging for the proposed site. The original work was authorized by Department of The Army Permit No. 17138. CMP Project No.: 12-0759-F1 Type of Application: U.S.A.C.E. permit application #SWG-1991-01792 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Ms. Kate Zultner, Consistency Review Specialist, P.O. Box 12873, Austin, Texas 78711-2873, or via email at kate.zultner@glo.texas.gov. Comments should be sent to Ms. Zultner at the above address or by email.

TRD-201203283
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: June 20, 2012

Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey described as follows:

A Coastal Boundary Survey, dated February 7, 2012, by David L. Nesbitt, Licensed State Land Surveyor, delineating the littoral boundary of a portion of the "El Rincon De Corpus Christi" Ramon De Yno-
Services operates these programs. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC), Title 1, §355.105(g), which require public notice and hearings on proposed payment rates.

The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard.

Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Esther Brown by calling (512) 491-1445, at least 72 hours prior to the hearing, so appropriate arrangements can be made.

Proposal. HHSC proposes to adopt rates for DAHS under the CBA and MDCP programs. The proposed rates will be effective September 1, 2012, and were determined in accordance with the rate setting methodologies listed below under “Methodology and Justification.”

Methodology and Justification. The proposed rates were determined in accordance with the rate setting methodologies codified at 1 TAC §355.503, Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs, and §355.507, Reimbursement Methodology for the Medically Dependent Children Program. Note that §355.503 and §355.507 will be proposed to be amended in the Texas Register to add a reimbursement methodology for DAHS to the CBA and MDCP waiver programs with a September 1, 2012, effective date.

Briefing Package. A briefing package describing the proposed payment rates will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on June 29, 2012. Interested parties also may obtain a copy of the briefing package prior to the hearing by contacting Esther Brown by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at Esther.Brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Esther Brown, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Esther Brown at (512) 491-1998; or by e-mail to Esther.Brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Esther Brown, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-201203214
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 18, 2012

Notice of Public Hearing on Proposed Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on Wednesday, July 18, 2012, at 2:00 p.m. to receive public comment on proposed rates under foster care redesign for Single Source Continuum Contractors (SSCCs) providing services in the 24-Hour Residential Child Care program operated by the Department of Family and Protective Services. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC), Title 1, §355.105(g), which require public notice and hearings on proposed payment rates.

The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard.

Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Esther Brown by calling (512) 491-1445, at least 72 hours prior to the hearing, so appropriate arrangements can be made.

Proposal. HHSC proposes to adopt rates for foster care redesign including blended foster care rates and a rate ceiling for exceptional care. The proposed rates will be effective June 1, 2012, with the exception of the proposed rate ceiling for exceptional care, which will be effective August 1, 2012. The proposed rates were determined in accordance with the rate setting methodologies listed below under “Methodology and Justification.”

Methodology and Justification. The proposed rates were determined in accordance with the rate setting methodology codified at 1 TAC §355.7103, Rate-Setting Methodology for 24-Hour Residential Child Care Reimbursements, which states that payment rates for SSCCs under foster care redesign are determined on a pro forma basis. These rates are being proposed to allow for the implementation of foster care redesign in selected catchment areas.

Briefing Package. A briefing package describing the proposed payment rates will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on June 29, 2012. Interested parties also may obtain a copy of the briefing package prior to the hearing by contacting Esther Brown by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at Esther.Brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Esther Brown, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Esther Brown at (512) 491-1998; or by e-mail to Esther.Brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Esther Brown, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-201203258
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: June 19, 2012

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 table. 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:

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<td>UT Physicians</td>
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<td>American Diagnostic Tech., L.L.C.</td>
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<td>Houston</td>
<td>The University of Texas M.D. Anderson Cancer Center</td>
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<td>Houston</td>
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<td>Lakeview Regional Medical Center, L.L.C.</td>
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<td>Lubbock</td>
<td>Covenant Medical Center</td>
<td>L06483</td>
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<td>Lubbock</td>
<td>Cardinal Health Nuclear Pharmacy Services</td>
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<td>Pampa</td>
<td>Hunting Titan, Ltd.</td>
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<td>Pampa</td>
<td>Texas Heart Hospital of the Southwest, L.L.P.</td>
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<td>Queen City</td>
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<td>Rosharon</td>
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<td>San Antonio</td>
<td>South Texas Radiology Imaging Centers</td>
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<td>San Antonio</td>
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<td>VHS San Antonio Partners, L.L.C.</td>
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<td>Methodist Sugar Land Hospital</td>
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<td>Luminant Mining Company, L.L.C.</td>
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<td>Memorial Hermann Hospital System of The Woodlands</td>
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<td>Alvin</td>
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<td>Lotus, L.L.C.</td>
<td>L05147</td>
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<td>Gray Wireline Service, Inc.</td>
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<td>Fort Worth</td>
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<td>Throughout TX</td>
<td>JV Industrial Companies, Ltd.</td>
<td>L06214</td>
<td>Freeport</td>
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<td>Throughout TX</td>
<td>Professional Service Industries, Inc.</td>
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<td>DAE &amp; Associates, Ltd.</td>
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<td>Waxahachie</td>
<td>Baylor Medical Center at Waxahachie</td>
<td>L04536</td>
<td>Waxahachie</td>
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<td>Webster</td>
<td>CHCA Clear Lake, L.P.</td>
<td>L01680</td>
<td>Webster</td>
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<td>06/06/12</td>
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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.

Texas Department of Housing and Community Affairs
Notice of Public Hearing on FFY 2013 Low-Income Home Energy Assistance Program State Plan

For the 2013 Federal Fiscal Year (FFY) beginning October 1, 2012, the Texas Department of Housing and Community Affairs (TDHCA) anticipates receiving federal funds to continue the operation of programs that assist very low-income Texans with home energy. In the process of deciding how to use Low-Income Home Energy Assistance Program (LIHEAP) funds, TDHCA solicits public input on the details of the plan.

As part of the public information, consultation, and public hearing requirements for LIHEAP, the Community Affairs Division of TDHCA has posted the proposed plan on the TDHCA website and will conduct a public hearing. Primarily, the hearing solicits comments on the proposed use and distribution of FFY 2013 funds provided under LIHEAP. LIHEAP provides funding for the Comprehensive Energy Assistance Program (CEAP) and the Weatherization Assistance Program (WAP).

The public hearing has been scheduled as follows:
Thursday, July 12, 2012, 9:00 a.m.
Texas Department of Housing and Community Affairs
221 East 11th Street, Room 116
Austin, Texas 78701

A representative from TDHCA will explain the planning process and receive comments from stakeholders and the general public regarding the proposed plan for LIHEAP. A copy of the Draft LIHEAP Plan may be obtained after June 20, 2012, through TDHCA’s website, http://www.tdhca.state.tx.us/ea.htm or by contacting the Texas Department of Housing and Community Affairs, Community Affairs Division, P.O. Box 13941, Austin, Texas 78711-3941, or by phone at (512) 475-1435.

Anyone may submit comments on the draft plan in written form or oral testimony at the public hearing. TDHCA must receive written comments no later than 5:00 p.m., Sunday, July 15, 2012. Comments concerning the draft plan may be submitted via email to cate.taylor@tdhca.state.tx.us or by fax (512) 475-3935 or by mail to the Texas De-
department of Housing and Community Affairs, Community Affairs Division, Attention Cate Taylor, at TDHCA, P.O. Box 13941, Austin, TX 78711-3941. If you have questions regarding the public hearing process or any of the programs referenced above, please contact TDHCA, Community Affairs Division.

Individuals who require auxiliary aids or services for this meeting should contact Ms. Gina Esteves at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Jorge Reyes, (512) 475-4577, at least three (3) days before the meeting so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-201203172
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 15, 2012

Texas Department of Insurance
Company Licensing

Application to do business in the State of Texas by GERIATRIC DENTAL INSURANCE SERVICES OF TEXAS, INC., a domestic Health Maintenance Organization. The home office is in Southlake, Texas.

Application to do business in the State of Texas by KAG EMPLOYEE BENEFIT TRUST, a domestic Multiple Employer Welfare Agreement. The home office is in San Antonio, Texas.

Application for admission to the State of Texas by NATIONAL MORTGAGE INSURANCE CORPORATION, a foreign fire and/or casualty company. The home office is in Sun Prairie, Wisconsin.

Application for admission to the State of Texas by NATIONAL MORTGAGE REINSURANCE INC ONE, a foreign fire and/or casualty company. The home office is in Sun Prairie, Wisconsin.

Application to change the name of STONINGTON LLOYDS INSURANCE COMPANY to QBE STONINGTON INSURANCE COMPANY, a Lloyd's plan pending conversion to a stock property and casualty company. The home office is in Plano, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the Texas Register publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201203272
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: June 20, 2012

Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to the Insurance Code, Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Pacificare Life and Health Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, General Counsel Division, Legal Section - Nick Hoelscher, 333 Guadalupe, Tower I, Room 920, Austin, Texas.

If you wish to comment on the application of Pacificare Life and Health Insurance Company to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the Texas Register to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Upon consideration of the application and comments, if the commissioner is satisfied that all requirements of law have been met, the commissioner or the commissioner's designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-201203093
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: June 14, 2012

Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to the Insurance Code, Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Blue Cross Blue Shield of Texas, a Division of Health Care Services Corporation

The application is subject to public inspection at the offices of the Texas Department of Insurance, General Counsel Division, Legal Section - Nick Hoelscher, 333 Guadalupe, Tower I, Room 920, Austin, Texas.

If you wish to comment on the application of Blue Cross Blue Shield of Texas, a Division of Health Care Services Corporation, to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the Texas Register to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Upon consideration of the application and comments, if the commissioner is satisfied that all requirements of law have been met, the commissioner or the commissioner's designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-201203094
Texas Windstorm Insurance Association, Dwelling and Commercial Policies

Reference Numbers--Dwelling P-0612-03 and Commercial P-0612-04, TDI #s 9212541451 and 9212541452 and Link #s 121484 and 121485

The Texas Windstorm Insurance Association (TWIA) submitted revisions to its dwelling and commercial policies to the Texas Department of Insurance for approval under Title 28 Texas Administrative Code §5.4911.

TWIA revised both the dwelling and commercial policies to show TWIA's new address, and to show the effective date of the revised policy. TWIA revised the commercial policy to delete provision 4.a.(5) regarding replacement cost coverage, which is not included in the basic commercial policy.

TDI may act on the revised policies after July 30, 2012. You may get a copy of the submitted policies from the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or from http://www.tdi.texas.gov/submissions/indextwia.html.

If you wish to comment on the submission, or to request a public hearing, you must do so in writing no later than 5:00 p.m. on July 19, 2012. A hearing request must be on a separate page from any written comments. TDI requires two copies of your comments and hearing request. Send one copy to the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or by email to ChiefClerk@tdi.state.tx.us. Send the other copy to Marilyn Hamilton, Director, Personal and Commercial Lines Office Mail Code 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or by email to Marilyn.Hamilton@tdi.state.tx.us.

TRD-201203280

Texas Lottery Commission

Instant Game Number 1424 "Cowboys"

1.0 Name and Style of Game.
A. The name of Instant Game No. 1424 is "COWBOYS". The play style is "key number match".

1.1 Price of Instant Ticket.
A. Tickets for Instant Game No. 1424 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1424.
A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.
B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.
C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 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, FOOTBALL SYMBOL, TD SYMBOL, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $1,000 and $100,000.
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:
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E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00 or $100.

H. High-Tier Prize - A prize of $1,000, $5,000 or $100,000.

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 (1424), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1424-0000001-001.

K. Pack - A pack of "COWBOYS" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

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 "COWBOYS" Instant Game No. 1424 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 "COWBOYS" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-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 "football" play symbol, the player wins the PRIZE for that symbol. If the player reveals a "TD" play symbol, the player WINS ALL 20 PRIZES 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 45 (forty-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 45 (forty-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 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 45 (forty-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. The "TD" (win all) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. The "FOOTBALL" (auto win) play symbol will never appear more than once on a ticket.

D. No six or more identical non-winning prize symbols on a ticket.

E. No duplicate WINNING NUMBERS play symbols on a ticket.

F. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. When the "TD" (win all) play symbol appears, there will be no occurrence of any of YOUR NUMBERS play symbols matching any WINNING NUMBER play symbol.

I. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e., 15 and $15).

J. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "COWBOYS" Instant Game prize of $5.00, $10.00, $20.00, $50.00 or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "COWBOYS" Instant Game prize of $1,000, $5,000 or $100,000, 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 "COWBOYS" 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.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

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 "COWBOYS" 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 "COWBOYS" 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.

2.9 Promotional Second-Chance Drawings. Any non-winning "COW-BOYS" Instant Game scratch-off ticket may be entered into one of five promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the ticket for information on eligibility and entry requirements.

3.0 Instant Ticket Ownership.

Figure 2: GAME NO. 1424 - 4.0

<table>
<thead>
<tr>
<th>Prize Amount</th>
<th>Approximate Number of Winners*</th>
<th>Approximate Odds are 1 in**</th>
</tr>
</thead>
<tbody>
<tr>
<td>$5</td>
<td>1,264,000</td>
<td>7.50</td>
</tr>
<tr>
<td>$10</td>
<td>1,106,000</td>
<td>8.57</td>
</tr>
<tr>
<td>$20</td>
<td>126,400</td>
<td>75.00</td>
</tr>
<tr>
<td>$50</td>
<td>63,200</td>
<td>150.00</td>
</tr>
<tr>
<td>$100</td>
<td>26,070</td>
<td>363.64</td>
</tr>
<tr>
<td>$1,000</td>
<td>360</td>
<td>26,333.33</td>
</tr>
<tr>
<td>$5,000</td>
<td>80</td>
<td>118,500.00</td>
</tr>
<tr>
<td>$100,000</td>
<td>25</td>
<td>379,200.00</td>
</tr>
</tbody>
</table>

*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 3.67. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

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 9,480,000 tickets in the Instant Game No. 1424. The approximate number and value of prizes in the game are as follows:

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1424 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. 1424, 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-201203248

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 19, 2012

Instant Game Number 1425 "Houston Texans"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1425 is "HOUSTON TEXANS". The play style is "key symbol match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1425 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1425.
A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 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, FOOTBALL SYMBOL, GOAL POST SYMBOL, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $1,000 and $100,000.

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:
<table>
<thead>
<tr>
<th>PLAY SYMBOL</th>
<th>CAPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>ONE</td>
</tr>
<tr>
<td>2</td>
<td>TWO</td>
</tr>
<tr>
<td>3</td>
<td>THR</td>
</tr>
<tr>
<td>4</td>
<td>FOR</td>
</tr>
<tr>
<td>5</td>
<td>FIV</td>
</tr>
<tr>
<td>6</td>
<td>SIX</td>
</tr>
<tr>
<td>7</td>
<td>SVN</td>
</tr>
<tr>
<td>8</td>
<td>EGT</td>
</tr>
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<td>9</td>
<td>NIN</td>
</tr>
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<td>10</td>
<td>TEN</td>
</tr>
<tr>
<td>11</td>
<td>ELV</td>
</tr>
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<td>12</td>
<td>TLV</td>
</tr>
<tr>
<td>13</td>
<td>TRN</td>
</tr>
<tr>
<td>14</td>
<td>FTN</td>
</tr>
<tr>
<td>15</td>
<td>FFN</td>
</tr>
<tr>
<td>16</td>
<td>SXN</td>
</tr>
<tr>
<td>17</td>
<td>SVT</td>
</tr>
<tr>
<td>18</td>
<td>ETN</td>
</tr>
<tr>
<td>19</td>
<td>NTN</td>
</tr>
<tr>
<td>20</td>
<td>TWY</td>
</tr>
<tr>
<td>21</td>
<td>TWON</td>
</tr>
<tr>
<td>22</td>
<td>TWTO</td>
</tr>
<tr>
<td>23</td>
<td>TWTH</td>
</tr>
<tr>
<td>24</td>
<td>TWFR</td>
</tr>
<tr>
<td>25</td>
<td>TWFRV</td>
</tr>
<tr>
<td>26</td>
<td>TWSX</td>
</tr>
<tr>
<td>27</td>
<td>TWSV</td>
</tr>
<tr>
<td>28</td>
<td>TWET</td>
</tr>
<tr>
<td>29</td>
<td>TWNI</td>
</tr>
<tr>
<td>30</td>
<td>TRTY</td>
</tr>
<tr>
<td>31</td>
<td>TRON</td>
</tr>
<tr>
<td>32</td>
<td>TRTO</td>
</tr>
<tr>
<td>33</td>
<td>TRTH</td>
</tr>
<tr>
<td>34</td>
<td>TRFR</td>
</tr>
<tr>
<td>35</td>
<td>TREFV</td>
</tr>
<tr>
<td>36</td>
<td>TRSX</td>
</tr>
<tr>
<td>37</td>
<td>TRSV</td>
</tr>
<tr>
<td>38</td>
<td>TRET</td>
</tr>
<tr>
<td>39</td>
<td>TRNI</td>
</tr>
<tr>
<td>40</td>
<td>FRTY</td>
</tr>
<tr>
<td></td>
<td>FOOTBALL SYMBOL</td>
</tr>
<tr>
<td></td>
<td>GOAL POST SYMBOL</td>
</tr>
<tr>
<td>$5.00</td>
<td>FIVE$</td>
</tr>
<tr>
<td>$10.00</td>
<td>TENS$</td>
</tr>
<tr>
<td>$15.00</td>
<td>FIFTN</td>
</tr>
<tr>
<td>$20.00</td>
<td>TWENTY</td>
</tr>
</tbody>
</table>
E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00 or $100.

H. High-Tier Prize - A prize of $1,000, $5,000 or $100,000.

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 (1425), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1425-0000001-001.

K. Pack - A pack of "HOUSTON TEXANS" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

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 "HOUSTON TEXANS" Instant Game No. 1425 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 "HOUSTON TEXANS" Instant Game is determined once the latex on the ticket is scratched off to expose 40 (forty) Play Symbols. If the player reveals a "football" play symbol in any SPOT, the player wins the PRIZE for that SPOT. If the player reveals a "goal post" play symbol, the player wins DOUBLE 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 40 (forty) Play Symbols must appear under the Latex Overprint on the front portion of the ticket;
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. The "GOAL POST" (doubler) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. No six or more identical non-winning prize symbols on a ticket.

D. No duplicate non-winning play symbols on a ticket.

E. Non-winning prize symbols will never be the same as the winning prize symbol(s).

F. No prize amount in a non-winning spot will correspond with the play symbol (i.e., 5 and $5).

G. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "HOUSTON TEXANS" Instant Game prize of $5.00, $10.00, $20.00, $50.00 or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HOUSTON TEXANS" Instant Game prize of $1,000, $5,000 or $100,000, 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 "HOUSTON TEXANS" 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.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

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 "HOUSTON TEXANS" 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 "HOUSTON TEXANS" 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.

2.9 Promotional Second-Chance Drawings. Any non-winning "HOUSTON TEXANS" Instant Game scratch-off ticket may be entered into one of five promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the ticket for information on eligibility and entry requirements.

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 5,520,000 tickets in the Instant Game No. 1425. The approximate number and value of prizes in the game are as follows:

![Table]

*A 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 3.66. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1425 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. 1425, 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-201203249
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 19, 2012

Instant Game Number 1444 "Veterans Cash"

1.0 Name and Style of Game.
A. The name of Instant Game No. 1444 is "VETERANS CASH." The play style is "key number match."

1.1 Price of Instant Ticket.
A. Tickets for Instant Game No. 1444 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 1444.
A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible play symbols are: $2.00, $5.00, $10.00, $20.00, $50.00, $100, $1,000, $20,000, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and DOLLAR SIGN SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink.
The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

<table>
<thead>
<tr>
<th>PLAY SYMBOL</th>
<th>CAPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>01</td>
<td>ONE</td>
</tr>
<tr>
<td>02</td>
<td>TWO</td>
</tr>
<tr>
<td>03</td>
<td>THR</td>
</tr>
<tr>
<td>04</td>
<td>FOR</td>
</tr>
<tr>
<td>05</td>
<td>FIV</td>
</tr>
<tr>
<td>06</td>
<td>SIX</td>
</tr>
<tr>
<td>07</td>
<td>SVN</td>
</tr>
<tr>
<td>08</td>
<td>EGT</td>
</tr>
<tr>
<td>09</td>
<td>NIN</td>
</tr>
<tr>
<td>10</td>
<td>TEN</td>
</tr>
<tr>
<td>11</td>
<td>ELV</td>
</tr>
<tr>
<td>12</td>
<td>TLV</td>
</tr>
<tr>
<td>13</td>
<td>TRN</td>
</tr>
<tr>
<td>14</td>
<td>FTN</td>
</tr>
<tr>
<td>15</td>
<td>FFN</td>
</tr>
<tr>
<td>16</td>
<td>SXN</td>
</tr>
<tr>
<td>17</td>
<td>SVT</td>
</tr>
<tr>
<td>18</td>
<td>ETN</td>
</tr>
<tr>
<td>19</td>
<td>NTN</td>
</tr>
<tr>
<td>20</td>
<td>TWY</td>
</tr>
<tr>
<td>21</td>
<td>TWIN</td>
</tr>
<tr>
<td>22</td>
<td>TWTO</td>
</tr>
<tr>
<td>23</td>
<td>TWTH</td>
</tr>
<tr>
<td>24</td>
<td>TWF</td>
</tr>
<tr>
<td>25</td>
<td>TWFV</td>
</tr>
<tr>
<td>26</td>
<td>TWSX</td>
</tr>
<tr>
<td>27</td>
<td>TWSV</td>
</tr>
<tr>
<td>28</td>
<td>TWET</td>
</tr>
<tr>
<td>29</td>
<td>TWIN1</td>
</tr>
<tr>
<td>30</td>
<td>TRTY</td>
</tr>
</tbody>
</table>

DOLLAR SIGN SYMBOL | CAPTION
---|--------
$2.00 | TWO$  
$5.00 | FIVE$ 
$10.00| TEN$  
$20.00| TWENTY|
$50.00| FIFTY |
$100  | ONE HUN |
$1,000| ONE THOU|
$20,000| 20 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, $5.00, $10.00 or $20.00.
G. Mid-Tier Prize - A prize of $30.00, $50.00 or $100.

H. High-Tier Prize - A prize of $1,000 or $20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game number, 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 (1444), 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: 1444-0000001-001.

K. Pack - A pack of "VETERANS CASH" 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. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack.

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 "VETERANS CASH" Instant Game No. 1444 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 "VETERANS CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of the YOUR NUMBERS play symbols to either WINNING NUMBERS play symbol, the player wins the prize for that number. If a player reveals a "DOLLAR SIGN" play symbol, the player WINS ALL 10 PRIZES! 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 22 (twenty-two) 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 22 (twenty-two) 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 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 22 (twenty-two) 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 within a pack will not have identical patterns.
B. A ticket will win as indicated by the prize structure.
C. Players can win up to ten (10) times on a ticket.
D. No duplicate non-winning YOUR NUMBERS on a ticket.
E. Non-winning prize symbols will not match a winning prize symbol on a ticket.
F. Non-winning tickets will not contain more than two identical prize symbols.

IN ADDITION  June 29, 2012  37 TexReg 5009
G. No duplicate WINNING NUMBER will appear on a ticket.

H. The "$" symbol will never appear as a WINNING NUMBER.

I. The "$" symbol will automatically win all 10 prizes on a ticket and will win as per the prize structure.

J. The "$" symbol will never appear more than once on a ticket.

K. The "$" symbol will never appear on a non-winning ticket.

L. On "$" winning tickets, no YOUR NUMBERS will match any of the WINNING NUMBERS.

M. YOUR NUMBERS will never equal the corresponding PRIZE symbol (i.e., 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "VETERANS CASH" Instant Game prize of $2.00, $5.00, $10.00, $20.00, $30.00, $50.00 or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $50.00, or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "VETERANS CASH" Instant Game prize of $1,000 or $20,000, 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 "VETERANS CASH" 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 Texas 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 "VETERANS CASH" 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 "VETERANS CASH" 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
6,000,000 tickets in the Instant Game No. 1444. The approximate
number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1444 - 4.0

<table>
<thead>
<tr>
<th>Prize Amount</th>
<th>Approximate Number of Winners*</th>
<th>Approximate Odds are 1 in**</th>
</tr>
</thead>
<tbody>
<tr>
<td>$2</td>
<td>672,000</td>
<td>8.93</td>
</tr>
<tr>
<td>$5</td>
<td>336,000</td>
<td>17.86</td>
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<tr>
<td>$10</td>
<td>264,000</td>
<td>22.73</td>
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<tr>
<td>$20</td>
<td>48,000</td>
<td>125.00</td>
</tr>
<tr>
<td>$30</td>
<td>12,500</td>
<td>480.00</td>
</tr>
<tr>
<td>$50</td>
<td>5,750</td>
<td>1,043.48</td>
</tr>
<tr>
<td>$100</td>
<td>2,875</td>
<td>2,086.96</td>
</tr>
<tr>
<td>$1,000</td>
<td>18</td>
<td>333,333.33</td>
</tr>
<tr>
<td>$20,000</td>
<td>11</td>
<td>545,454,55</td>
</tr>
</tbody>
</table>

*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 4.47. The individual odds of winning for a
particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1444 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. 1444, 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-201203263
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 20, 2012

Instant Game Number 1451 "Bonus Word Crossword"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1451 is "BONUS WORD CROSSWORD." The play style is "crossword."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1451 shall be $3.00 per ticket.

1.2 Definitions in Instant Game No. 1451.

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 - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, $3.00, $5.00, $10.00, $20.00, $100, $500, $5,000 and $35,000.

D. Play Symbol Caption - The small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have play symbol captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:
E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $3.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $100 or $500.

H. High-Tier Prize - A prize of $5,000 or $35,000.

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 (1451), 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: 1451-0000001-001.

K. Pack - A pack of "BONUS WORD CROSSWORD" Instant Game tickets contain 125 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the
front of the pack; the back of ticket 125 will be revealed on the back of the pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 125 will be shown on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack.

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 "BONUS WORD CROSSWORD" Instant Game No. 1451 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 "BONUS WORD CROSSWORD" Instant Game is determined once the latex on the ticket is scratched off to expose up to 103 (one hundred three) possible play symbols. The player must scratch the YOUR LETTERS play area. The player must use the YOUR LETTERS play symbols to form words in the BONUS WORD CROSSWORD puzzle, and the player wins the amount shown in the PRIZE LEGEND. The player must use the YOUR LETTERS play symbols to form the BONUS WORD and if complete, the player wins the BONUS PRIZE. There will be only one prize per ticket. Letters combined to form a complete "word" must be revealed in an unbroken horizontal (left to right) sequence or vertical (top to bottom) sequence of letters within the BONUS WORD CROSSWORD puzzle. Letters combined to form a complete "word" must be revealed in an unbroken horizontal (left to right) sequence within the BONUS WORD play area. Only letters within the BONUS WORD CROSSWORD puzzle and BONUS WORD play areas that are matched with the YOUR LETTERS play symbols can be used to form a complete "word". Words within a word are not eligible for a prize. For example, all the YOUR LETTERS play symbols "S, T, O, N, E" must be revealed for this to count as one complete "word". TON, ONE or any other portion of the sequence of STONE would not count as a complete "word". A complete "word" must contain at least three letters. 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. One hundred three (103) possible 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, 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 present in its entirety and be fully legible;
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 103 (one hundred three) possible 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 103 (one hundred three) possible Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 103 (one hundred three) possible 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. Each grid will contain exactly the same amount of letters.
C. Each grid will contain exactly the same amount of words.
D. No duplicate words on a ticket.
E. All words used will be from the TEXAS APPROVED WORD LIST CASHWORD/CROSSWORD v.1.0.
F. All words will contain a minimum of 3 letters.
G. All words will contain a maximum of 9 letters.
H. No duplicate YOUR LETTERS play symbols.
I. There will be a minimum of 3 vowels (A, E, I, O and U) in the YOUR LETTERS play area.
J. A minimum of 15 YOUR LETTERS play symbols will match at least one letter in the crossword grid or the BONUS WORD.
K. The presence or absence of any letter or combination of letters in the YOUR LETTERS play area will not be indicative of a winning or non-winning ticket.
L. No consonant play symbol will appear more than 9 times in the crossword grid and no vowel will appear more than 14 times in the crossword grid.
M. On non-winning tickets, each crossword grid will have at least 2 completed words.
N. When the BONUS WORD is completed as a winner, there will never be more than one completed word in the crossword grid.
O. Each non-winning ticket will have at least 5 near wins (word with all but one letter matched).
P. Words from the TEXAS REJECTED WORD LIST v.2.0 will not appear horizontally, diagonally or vertically in the YOUR LETTERS area.

2.3 Procedure for Claiming Prizes.
A. To claim a "BONUS WORD CROSSWORD" Instant Game prize of $3.00, $5.00, $10.00, $20.00, $100 or $500, 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 $100 or $500 ticket.
B. To claim a "BONUS WORD CROSSWORD" Instant Game prize of $5,000 or $35,000, 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 "BONUS WORD CROSSWORD" 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 Texas 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 "BONUS WORD CROSSWORD" 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 "BONUS WORD CROSSWORD" 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 therefor, 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 therefor, 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 therefore. 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 30,000,000 tickets in the Instant Game No. 1451. The approximate number and value of prizes in the game are as follows:

### Figure 2: GAME NO. 1451 - 4.0

<table>
<thead>
<tr>
<th>Prize Amount</th>
<th>Approximate Number of Winners*</th>
<th>Approximate Odds are 1 in**</th>
</tr>
</thead>
<tbody>
<tr>
<td>$3</td>
<td>3,360,000</td>
<td>8.93</td>
</tr>
<tr>
<td>$5</td>
<td>4,320,000</td>
<td>6.94</td>
</tr>
<tr>
<td>$10</td>
<td>600,000</td>
<td>50.00</td>
</tr>
<tr>
<td>$20</td>
<td>360,000</td>
<td>83.33</td>
</tr>
<tr>
<td>$100</td>
<td>61,500</td>
<td>487.80</td>
</tr>
<tr>
<td>$500</td>
<td>12,500</td>
<td>2,400.00</td>
</tr>
<tr>
<td>$5,000</td>
<td>100</td>
<td>300,000.00</td>
</tr>
<tr>
<td>$35,000</td>
<td>46</td>
<td>652,173.91</td>
</tr>
</tbody>
</table>

*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 3.44. 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. 1451 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. 1451, 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-201203264
Kimberly L. Kipin
General Counsel
Texas Lottery Commission
Filed: June 20, 2012

Instant Game Number 1452 "Lotería® Texas"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1452 is "LOTERIA® TEXAS." The play style is "row/column."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1452 shall be $3.00 per ticket.

1.2 Definitions in Instant Game No. 1452.

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.


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. 1452 - 1.2D**

<table>
<thead>
<tr>
<th>PLAY SYMBOL</th>
<th>CAPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>THE ARROWS SYMBOL</td>
<td>THE ARROWS</td>
</tr>
<tr>
<td>THE BELL SYMBOL</td>
<td>THE BELL</td>
</tr>
<tr>
<td>THE BOOT SYMBOL</td>
<td>THE BOOT</td>
</tr>
<tr>
<td>THE CACTUS SYMBOL</td>
<td>THE CACTUS</td>
</tr>
<tr>
<td>THE CANOE SYMBOL</td>
<td>THE CANOE</td>
</tr>
<tr>
<td>THE CROWN SYMBOL</td>
<td>THE CROWN</td>
</tr>
<tr>
<td>THE DEER SYMBOL</td>
<td>THE DEER</td>
</tr>
<tr>
<td>THE DRUM SYMBOL</td>
<td>THE DRUM</td>
</tr>
<tr>
<td>THE FISH SYMBOL</td>
<td>THE FISH</td>
</tr>
<tr>
<td>THE FLOWERPOT SYMBOL</td>
<td>THE FLOWERPOT</td>
</tr>
<tr>
<td>THE FROG SYMBOL</td>
<td>THE FROG</td>
</tr>
<tr>
<td>THE HAND SYMBOL</td>
<td>THE HAND</td>
</tr>
<tr>
<td>THE LADDER SYMBOL</td>
<td>THE LADDER</td>
</tr>
<tr>
<td>THE MERMAID SYMBOL</td>
<td>THE MERMAID</td>
</tr>
<tr>
<td>THE MOON SYMBOL</td>
<td>THE MOON</td>
</tr>
<tr>
<td>THE MUSICIAN SYMBOL</td>
<td>THE MUSICIAN</td>
</tr>
<tr>
<td>THE PARROT SYMBOL</td>
<td>THE PARROT</td>
</tr>
<tr>
<td>THE PEAR SYMBOL</td>
<td>THE PEAR</td>
</tr>
<tr>
<td>THE PITCHER SYMBOL</td>
<td>THE PITCHER</td>
</tr>
<tr>
<td>THE ROOSTER SYMBOL</td>
<td>THE ROOSTER</td>
</tr>
<tr>
<td>THE ROSE SYMBOL</td>
<td>THE ROSE</td>
</tr>
<tr>
<td>THE STAR SYMBOL</td>
<td>THE STAR</td>
</tr>
<tr>
<td>THE SUN SYMBOL</td>
<td>THE SUN</td>
</tr>
<tr>
<td>THE TREE SYMBOL</td>
<td>THE TREE</td>
</tr>
<tr>
<td>THE UMBRELLA SYMBOL</td>
<td>THE UMBRELLA</td>
</tr>
<tr>
<td>THE CELLO SYMBOL</td>
<td>THE CELLO</td>
</tr>
<tr>
<td>THE WATERMELON SYMBOL</td>
<td>THE WATERMELON</td>
</tr>
<tr>
<td>THE WORLD SYMBOL</td>
<td>THE WORLD</td>
</tr>
<tr>
<td>THE BARREL SYMBOL</td>
<td>THE BARREL</td>
</tr>
</tbody>
</table>

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $3.00, $4.00, $7.00, $10.00, $17.00 or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $33.00, $50.00, $80.00 or $300.

H. High-Tier Prize - A prize of $3,000 or $33,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1452), 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: 1452-0000001-001.

K. Pack - A pack of "LOTERIA® TEXAS" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrap and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.
M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LOTERIA® TEXAS" Instant Game No. 1452 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "LOTERIA® TEXAS" Instant Game is determined once the latex on the ticket is scratched off to expose up to 30 (thirty) play symbols. The player scratches off the CALLER'S CARD area to reveal 14 symbols. The player scratches only the symbols on the LOTERIA® CARD that match the symbols revealed on the CALLER'S CARD to reveal a bean. The player reveals 4 beans in any complete horizontal or vertical line in the LOTERIA® CARD to win the prize for that line. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 30 (thirty) Play Symbols must appear under the Latex Overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 30 (thirty) Play Symbols under the Latex Overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 30 (thirty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 30 (thirty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.
B. A ticket may win up to three (3) times per the prize structure.
C. No adjacent tickets will contain identical CALLER'S CARD play symbols in exactly the same locations.
D. No duplicate play symbols in the CALLER’S CARD play area.
E. On non-winning tickets, there will be at least one near win. A near win is defined as matching 3 of the 4 symbols to the CALLER’S CARD for a given row or column.
F. There will be no occurrence of all 4 symbols in either diagonal matching the CALLER’S CARD symbols.
G. At least 8, but no more than 12, CALLER’S CARD play symbols will match a symbol on the LOTERIA® CARD on a ticket.
H. There will be no duplicate play symbols on a LOTERIA® CARD as indicated in the artwork section.
I. Each LOTERIA® CARD will have an occurrence of the rooster symbol as indicated in the artwork section.

2.3 Procedure for Claiming Prizes.

A. To claim a "LOTERIA® TEXAS" Instant Game prize of $3.00, $4.00, $5.00, $10.00, $17.00, $20.00, $30.00, $33.00, $50.00, $80.00, or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $33.00, $50.00, $80.00, or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim
is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LOTERIA® TEXAS" Instant Game prize of $3,000 or $33,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LOTERIA® TEXAS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The 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 Texas 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 "LOTERIA® TEXAS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "LOTERIA® TEXAS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any 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 15,000,000 tickets in the Instant Game No. 1452. The approximate number and value of prizes in the game are as follows:
**Prize Amount** | **Approximate Number of Winners** | **Approximate Odds are 1 in**
---|---|---
$3 | 2,040,000 | 7.35
$4 | 480,000 | 31.25
$7 | 420,000 | 35.71
$10 | 270,000 | 55.56
$17 | 240,000 | 62.50
$20 | 240,000 | 62.50
$30 | 25,000 | 600.00
$33 | 12,500 | 1,200.00
$50 | 11,875 | 1,263.16
$80 | 10,000 | 1,500.00
$300 | 7,500 | 2,000.00
$3,000 | 223 | 67,264.57
$33,000 | 30 | 500,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.*

**The overall odds of winning a prize are 1 in 3.99. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.*

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1452 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, the Game Procedures for Instant Game No. 1452, 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-201203265
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 20, 2012

Instant Game Number 1454 "Bonus Break the Bank"

1.0 Name and Style of Game.
A. The name of Instant Game No. 1454 is "BONUS BREAK THE BANK". The play style is "key number match".

1.1 Price of Instant Ticket.
A. Tickets for Instant Game No. 1454 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1454.
A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.
B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.
C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 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, MONEY STACK SYMBOL, $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100, $500, $1,000, $7,500 and $75,000.

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:
<table>
<thead>
<tr>
<th>PLAY SYMBOL</th>
<th>CAPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>ONE</td>
</tr>
<tr>
<td>2</td>
<td>TWO</td>
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<tr>
<td>3</td>
<td>THR</td>
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<tr>
<td>4</td>
<td>FOR</td>
</tr>
<tr>
<td>5</td>
<td>FIV</td>
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<td>6</td>
<td>SIX</td>
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<td>TRNI</td>
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<td>40</td>
<td>FRTY</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>MONEystack Symbol</th>
<th>Caption</th>
</tr>
</thead>
<tbody>
<tr>
<td>$5.00</td>
<td>FIVE$</td>
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<tr>
<td>$10.00</td>
<td>TENS</td>
</tr>
<tr>
<td>$15.00</td>
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<tr>
<td>$20.00</td>
<td>TWENTY</td>
</tr>
<tr>
<td>$25.00</td>
<td>TWY FIV</td>
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</tbody>
</table>
E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $1,000, $7,500 or $75,000.

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 (1454), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1454-0000001-001.

K. Pack - A pack of "BONUS BREAK THE BANK" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

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 "BONUS BREAK THE BANK" Instant Game No. 1454 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 "BONUS BREAK THE BANK" Instant Game is determined once the latex on the ticket is scratched off to expose 38 (thirty-eight) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the LUCKY NUMBERS play symbols within the same game, the player wins prize for that number. If a player reveals a "MONEY STACK" play symbol, the player wins 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 38 (thirty-eight) 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 38 (thirty-eight) 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 38 (thirty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 38 (thirty-eight) 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 LUCKY NUMBERS play symbols on a ticket.

D. No more than four matching non-winning prize symbols on a ticket.

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 NUMBER play symbol (i.e., 5 and $5).

G. The MONEY STACK (auto win) play symbol will never appear more than once in a game, but may appear once in both games on tickets that win 2 or more times.

H. No YOUR NUMBER play symbol in one game will match a LUCKY NUMBER play symbol in the other game.

I. The top prize will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS BREAK THE BANK" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, 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 $5.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BONUS BREAK THE BANK" Instant Game prize of $1,000, $7,500 or $75,000, 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 "BONUS 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 on 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 "BONUS 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 "BONUS 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 15,000,000 tickets in the Instant Game No. 1454. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1454 - 4.0

<table>
<thead>
<tr>
<th>Prize Amount</th>
<th>Approximate Number of Winners</th>
<th>Approximate Odds are 1 in**</th>
</tr>
</thead>
<tbody>
<tr>
<td>$5</td>
<td>1,400,000</td>
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<tr>
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<tr>
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<td>$75,000</td>
<td>21</td>
<td>714,285.71</td>
</tr>
</tbody>
</table>

*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 3.81. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1454 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. 1454, 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-201203250
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 19, 2012

Instant Game Number 1468 "Nutcracker Cash"

1.0 Name and Style of Game.
A. The name of Instant Game No. 1468 is "NUTCRACKER CASH."
The play style is "key number match".

1.1 Price of Instant Ticket.
A. Tickets for Instant Game No. 1468 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1468.
A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.
B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.
C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 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, STAR
SYMBOL, ORNAMENT SYMBOL, $5.00, $10.00, $15.00, $20.00, $40.00, $50.00, $100, $500, $1,000 and $50,000.

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:
<table>
<thead>
<tr>
<th>PLAY SYMBOL</th>
<th>CAPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>ONE</td>
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<td>TWO</td>
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<td>3</td>
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<td>39</td>
<td>TRNI</td>
</tr>
<tr>
<td>40</td>
<td>FRTY</td>
</tr>
</tbody>
</table>

**STAR SYMBOL**

| $5.00  | FIVE$  |
| $10.00 | TENS$  |
| $15.00 | FIFTN  |
| $20.00 | TWENTY |
E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $1,000, or $50,000.

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 (1468), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1468-000001-001.

K. Pack - A pack of "NUTCRACKER CASH" Instant Game tickets contains 075 tickets, packed in plastic shrink-wraping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

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 "NUTCRACKER CASH" Instant Game No. 1468 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 "NUTCRACKER CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins PRIZE for that number. If a player reveals a "STAR" play symbol, the player wins DOUBLE the PRIZE for that symbol. If a player reveals an "ORNAMENT" play symbol, the player wins 5 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 45 (forty-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 45 (forty-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 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 45 (forty-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. No more than three duplicate non-winning prize symbols on a ticket.
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 NUMBER play symbol (i.e., 10 and $10).
G. The STAR (win x 2) and "ORNAMENT" (win x 5) play symbols will only appear on intended winning tickets as dictated by the prize structure.
H. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.
A. To claim a "NUTCRACKER CASH" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, 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, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.
B. To claim a "NUTCRACKER CASH" Instant Game prize of $1,000 or $50,000, 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 "NUTCRACKER CASH" 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 "NUTCRACKER CASH" 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 "NUTCRACKER CASH" 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 speci-
fied 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 7,080,000 tickets in the Instant Game No. 1468. The approximate number and value of prizes in the game are as follows:

<table>
<thead>
<tr>
<th>Prize Amount</th>
<th>Approximate Number of Winners*</th>
<th>Approximate Odds are 1 in**</th>
</tr>
</thead>
<tbody>
<tr>
<td>$5</td>
<td>660,800</td>
<td>10.71</td>
</tr>
<tr>
<td>$10</td>
<td>755,200</td>
<td>9.38</td>
</tr>
<tr>
<td>$15</td>
<td>283,200</td>
<td>25.00</td>
</tr>
<tr>
<td>$20</td>
<td>94,400</td>
<td>75.00</td>
</tr>
<tr>
<td>$50</td>
<td>20,650</td>
<td>342.86</td>
</tr>
<tr>
<td>$100</td>
<td>32,037</td>
<td>220.99</td>
</tr>
<tr>
<td>$500</td>
<td>4,425</td>
<td>1,600.00</td>
</tr>
<tr>
<td>$1,000</td>
<td>135</td>
<td>52,444.44</td>
</tr>
<tr>
<td>$50,000</td>
<td>10</td>
<td>708,000.00</td>
</tr>
</tbody>
</table>

*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 3.83. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1468 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. 1468, 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-201203251
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 19, 2012

North Central Texas Council of Governments
Request for Information for Technology Systems Related to For-Hire Vehicles

The North Central Texas Council of Governments (NCTCOG), in support of the Regional Transportation Council’s (RTC) initiative to explore options for implementation of a Regional Vehicle-For-Hire Program, is issuing this Request for Information (RFI) to qualified vendors capable of supplying solutions that will facilitate the purchase of Passenger and Driver Information Systems and other hardware/software solutions relating to the efficient operation of for-hire vehicles (i.e., taxicabs, limousines and shuttles) in the North Texas Region. This RFI is issued solely for information and planning purposes - it does not constitute a Request for Proposal (RFP) or a promise to issue an RFP in the future. This RFI does not commit NCTCOG to contract for any supply or service whatsoever. Costs associated with preparing a response to this request are at the respondent's own expense and will not be reimbursed by NCTCOG. Not responding to this RFI does not preclude participation in any future RFP, if any is issued.

Release and Due Date

The RFI was issued and made available on NCTCOG’s website on June 29, 2012. Responses to the RFI must be received no later than
5:00 p.m., on Friday, July 27, 2012, via mail or hand-delivery, to Jessie Huddleston, Principal Transportation Planner, North Central Texas Council of Governments, P.O. Box 5888, Arlington, Texas 76005-5888 (mail) or 616 Six Flags Drive, Arlington, Texas 76011 (hand-delivery). Copies of the RFI are available at http://www.nctcog.org/rfp.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-201203282
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: June 20, 2012

Request for Proposals for Web Interface and Smart Phone Applications for Real-Time Casual Carpooling and Managed Lane Lock-In Toll Rate

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) is seeking proposals to develop web interface and smart phone applications that 1) supports real-time casual carpooling, and 2) allows subscribers to see managed lane rates prior to leaving home or the office and lock in the rate if used within a specified timeframe. Proposers are invited to submit proposals that respond to one or both applications listed above.

Due Date
Proposals must be received no later than 5:00 p.m., on Friday, July 27, 2012, to Natalie Bettger, Senior Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Proposals (RFP) will be available at http://www.nctcog.org/rfp by the close of business on Friday, June 29, 2012.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

Contract Award Procedures
The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC’s recommendations and, if found acceptable, will issue a contract award.

Regulations
NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-201203281

R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: June 20, 2012

Texas Department of Public Safety

Request for Applications from Local Emergency Planning Committees for Hazardous Materials Emergency Preparedness Grants

INTRODUCTION: Texas Division of Emergency Management (TXDPS/TDEM), acting on behalf of the State Emergency Response Commission (SERC), is soliciting applications from Local Emergency Planning Committees (LEPC) for Hazardous Materials Emergency Preparedness (HMEP) grants to be awarded to cities/counties represented by LEPCs to further their work in hazardous materials transportation emergency planning.

DESCRIPTION OF ACTIVITIES: LEPCs are mandated by the federal Emergency Planning and Community Right-to-Know Act (EPCRA) to provide planning and information for communities relating to the use, storage, and/or transit of hazardous chemicals. The U.S. Department of Transportation (DOT) has made grant money available to enhance communities’ readiness for responding to hazardous materials transportation incidents. A grant may be used by an LEPC in various ways, depending on a community’s needs.

ELIGIBLE APPLICANTS: Each application must be developed by an LEPC in cooperation with county and/or city governments. LEPC membership must be recognized by the SERC. The application must be approved by an LEPC vote. Each LEPC shall arrange for a city or county to serve as its fiscal agent for the management of any and all money awarded under this grant.

CERTIFICATION: The fiscal agent must provide appropriate certification to commit funds for this project. The certification must be in the form of an enabling resolution from the county or an authorization to commit funds from the city.

LIMITATIONS: Total funding for these grants is dependent on the amount granted to the state from the DOT. This is the twenty-first of a series of annual grant awards, which will be issued through FY 2013. Grants will be awarded based upon project, population, hazardous materials risk, need, and cost-effectiveness as determined by the SERC. TXDPS/TDEM will fund a maximum of eighty percent (80%) of the total project amount approved by the SERC, and the remaining match must be borne by the grantee. Approved in-kind contributions may be used to satisfy this twenty percent (20%) requirement. In addition to the grant, LEPCs must maintain the same level of spending for planning as an average of the past two years.

EXAMPLES OF PROPOSALS:

(a) Development, improvement, and implementation of emergency plans required under EPCRA as well as exercises that test the emergency plans. Improvement of emergency plans may include hazard analysis or risk assessment as well as response procedures for emergencies involving transportation of hazardous materials including radioactive materials.

(b) An assessment to determine flow patterns of hazardous materials within a State and between a State and another State, Territory or Native American Land; and development and maintenance of a system to keep such information current.

(c) An assessment of the need for regional hazardous materials emergency response teams to assess local response capabilities.
(d) Conducting emergency response drills and exercises associated with transportation-related emergency response plans.

(e) Temporary technical staff to support the planning effort. (Staff funding under planning grants cannot be diverted to support other requirements of EPCRA.)

(f) Any other planning project related to the transportation of hazardous materials approved by TXDPS/TDEM, using U.S. DOT-approved projects as a reference base.

CONTRACT PERIOD: Grant contracts begin as early as October 1, 2012, and end August 31, 2013.

FINAL SELECTION: TXDPS/TDEM will review the applications, and the SERC Subcommittee on Planning will make the final selections. The State is under no obligation to award grants to any or all applicants.

APPLICATION FORMS AND DEADLINE: You can obtain a "Request for Application" package by downloading the documents from the TXDPS/TDEM website at http://www.dps.texas.gov/dem/GrantsResources/index.htm, or by requesting a copy from the Hazardous Materials Emergency Preparedness Officer, Donald A. Loucks, at donald.loucks@dps.texas.gov, or by calling (512) 424-5985.

The completed (original) "Request for Application" package must be sent via certified/registered mail, or other private mail delivery service requiring a signature, to the Texas Division of Emergency Management, Preparedness Section, Technological Hazards Unit, P.O. Box 4087, Austin, Texas 78773-0223. An electronic application must be received by 5:00 p.m. on July 31, 2012; the hard copy must be postmarked or shipped by July 31, 2012.

TRD-201203076
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Filed: June 14, 2012

Public Utility Commission of Texas

Notice of Application for Waiver of Denial of Numbering Resources

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 12, 2012, for waiver of denial by the Pooling Administrator (PA) of Consolidated Communications of Texas Company’s (CCTX) request for assignment of one thousands-block of numbers in the Riverbrook rate center.

Docket Title and Number: Petition of Consolidated Communications of Texas Company for Waiver of Denial of Numbering Resources in the Riverbrook Rate Center, Docket Number 40475.

The Application: CCTX requested assignment of one thousands-block of numbers on behalf of its customer, Sam Houston State University/Woodlands Center in the Riverbrook rate center. CCTX submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because CCTX 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 Monday, July 9, 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 40475.

TRD-201203105
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 15, 2012

Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of Nortex Communications’ (Nortex or the Applicant) application filed with the Public Utility Commission of Texas (commission) on June 13, 2012, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Nortex Communications to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171, Tariff Control Number 40485.

The Application: Nortex filed an application to implement an increase to the rates of the residential Local Exchange Access Line in all its exchanges, increase the business Local Exchange Access Line rates for Single-Line Business in all exchanges except for the Forestburg Exchange, and the Multi-Line Business in the Myra and Valley View/Valley View East exchanges to equalize rates for all residential and business customers. Nortex has also proposed to increase the rates for certain residential packages and to remove the residential package Simple Choice and the Key Telephone System Access Line residential rates from Section 1 in the Tariff because neither have any current customers. Nortex proposed an effective date of July 1, 2012. The estimated annual revenue increase recognized by Nortex is $107,535 or less than 3.58% of the Applicant’s gross annual intrastate revenues. Nortex has 3,155 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by Thursday, July 12, 2012, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission’s receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by Thursday, July 12, 2012. Requests to intervene should be filed with the commission’s Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free at (800) 735-2989. 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 correspondence should refer to Tariff Control Number 40485.

TRD-201203106
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 15, 2012

Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of Brazos Telephone Cooperative, Inc.’s (Brazos Telephone or the Applicant) application filed with the Public Utility Commission of Texas (commission) on June 18, 2012, for
approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Brazos Telephone Cooperative, Inc. to Implement a Minor Rate Change Pursuant to Subst. R. §26.171, Tariff Control Number 40489.

The Application: Brazos Telephone filed an application to implement an increase to the Local Exchange Access Line Rates for residence and business customers and the Residential Package's rates in its Local Exchange Tariff. Brazos Telephone also is proposing to bundle the Local Access Line rates and Tone Dialing Service rates for residence and business customers. Additionally, Brazos Telephone proposes to remove the following obsolete Residential Packages, which have no current customers: Brazos Value Pack's 100, 300, and 500 minutes with Dial-Up Internet Service in Section 1, in its Local Exchange Tariff. Brazos Telephone has proposed an effective date of July 1, 2012. The estimated annual revenue increase recognized by the Applicant is $92,852 or less than 4.65% of Applicant's gross annual intrastate revenues. BTI has 3,042 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by July 2, 2012, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by July 2, 2012. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 40489.

TRD-201203273
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 20, 2012

Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of Brazos Telecommunications, Inc.'s (BTI or the Applicant) application filed with the Public Utility Commission of Texas (commission) on June 18, 2012, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Brazos Telecommunications, Inc. to Implement a Minor Rate Change Pursuant to Subst. R. §26.171, Tariff Control Number 40490.

The Application: BTI filed an application to implement an increase to the monthly Local Exchange Access Line Rates for residence customers and all the Residential Package rates in Section 1. BTI also proposes to bundle the Local Exchange Access Line rates with the tone Dialing Service rates for residential and business customers. Additionally, BTI also proposes to remove the following obsolete Residential Packages, which have no current customers: Brazos Value Pack's 100, 300, and 500 minutes with Dial-Up Internet Service in Section 1, in its Local Exchange Tariff. The proposed effective date for the proposed rate changes is July 1, 2012. The estimated annual revenue increase

Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Engineering Services

Jasper County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Jasper County-Bell Field during the course of the next five years through multiple grants.

Current Project: Jasper County. TxDOT CSJ No.: 1220JASPR. Scope: Provide engineering/design services to rehabilitate and mark Runway 18-36; rehabilitate apron, parallel taxiway to runway 18-36 and cross taxiways; expand apron; install precision approach path indicator 2 Runway 18-36; drainage improvements for runway and taxiway system; install fencing and install stand-by generator for emergency operation of the following: Medium intensity runway lights, PAPI-2 Runway 18-36, automated weather observing system and fuel systems.

The HUB goal for the current project is five (5) percent. TxDOT Project Manager is Clayton Bridwell.

Future scope work items for engineering/design services within the next five years may include the following:

1. Construct hangar access taxiways
2. Rehabilitate and mark apron
3. Rehabilitate and mark taxiways
4. Install fencing
5. Install REIL Runway 18-36
6. Rehab hangar access taxiways

Jasper County reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.
To assist in your proposal preparation, the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Jasper County-Bell Field." The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

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, 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:

Five completed, unfolded copies of Form AVN-550 must be received by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than July 24, 2012, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the form to the attention of Sheri Quinlan.

The consultant selection committee will be composed of one local government member and 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 Engineering 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 Sheri Quinlan, Grant Manager. For technical questions, please contact Clayton Bridwell, Project Manager.

TRD-201203285
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 20, 2012

Public Notice of Draft Environmental Impact Statement - Grand Parkway (SH 99), Segment B

Pursuant to Title 43, Texas Administrative Code, §2.103(d), the Texas Department of Transportation (department) is announcing to the public the availability of the Draft Environmental Impact Statement (DEIS) dated June 6, 2012, for the proposed construction of Segment B of the Grand Parkway (State Highway 99), from SH 288 to I-45 (S) in Brazoria and Galveston Counties, Texas. Written comments may be submitted to the Grand Parkway Association, Attention: Segment B Comments, 4544 Post Oak Place, Suite 222, Houston, Texas 77027 or to TxDOT Houston District, Attention: Director of Project Development, P.O. Box 1386, Houston, Texas 77251-1386. Comments will also be accepted by email to segmentBcomments@grandpky.com. The comment period closes on August 14, 2012.

Transportation improvements are needed in the Segment B study area because transportation demand exceeds the current and future capacity of the existing infrastructure, the current transportation system does not provide efficient connections between suburban communities and major radial roadways, and expected population growth will continue to strain the existing transportation infrastructure. The purpose of the proposed transportation improvements in the Segment B study area is to improve mobility and traffic movement on local roadways, efficiently link suburban communities and major roadways, and provide infrastructure to support population growth. The transportation improvements would provide an additional evacuation route, thereby creating safer and more efficient evacuation conditions.

The study process included consideration of a full range of alternatives. The study team considered the No-Build Alternative, alternate transport modes, alternative corridors, and various Build Alternative Alignments. Transportation System Management (TSM), Travel Demand Management (TDM), and modal transportation improvements such as bus transit, public transit, high-occupancy vehicle lanes, rail transit, added single-occupancy vehicle capacity, and new roadway construction alternatives were considered. Alternatives determined not to meet the need for and purpose of the project were eliminated from further consideration, while other reasonable alternatives were identified and carried forward for detailed study. The Build Alternative was determined to best meet the need for and purpose of the project. The candidate alternative alignments were evaluated for potential adverse impacts to the human and natural environment. The Recommended Alternative Alignment was identified after consideration of comments received from the public and resource agencies.

The Recommended Alternative Alignment consists of a controlled access toll road on a new location, incorporating portions of existing road rights-of-way. The proposed facility would include four main lanes and intermittent frontage roads within a right-of-way width of 400 feet. A total of seven Build Alternative Alignments, in addition to the No-Build Alternative, are presented in the DEIS. All reasonable Build Alternative Alignments extend from SH 288 to I-45 (S) and are described as follows.

1. The Northern Alternative Alignment begins at the intersection of SH 288 and County Road 60 and passes through the northern portion of the study area, north of the City of Alvin. This alignment alternative ends at the intersection of I-45 (S) and FM 646 and is 23.2 miles in length.

2. The Northern 2 Alternative Alignment begins at the intersection of SH 288 and County Road 56 and passes through the northern portion of the study area, north of the City of Alvin. This alignment alternative ends at the intersection of I-45 (S) and FM 646 and is 21.2 miles in length.

3. The Central Alternative Alignment begins at the same location as the Northern Alternative Alignment and passes through the central portion of the study area using a portion of SH 35 in the City of Alvin. This alignment alternative ends at the intersection of I-45 (S) and FM 646 and is 24.8 miles in length.

37 TexReg 5032  June 29, 2012  Texas Register
4. The Central-South Alternative Alignment begins at the same location as the Northern Alternative Alignment and passes through the south-central portion of the study area using a portion of SH 35 in the City of Alvin. This alignment alternative ends at the intersection of I-45 (S) and FM 646 and is 26.3 miles in length.

5. The South-New Alternative Alignment (Recommended Alternative) begins at the same location as the Northern Alternative Alignment and passes through the south-central portion of the study area using several miles of SH 35 within the study area. This alignment alternative ends at the intersection of I-45 (S) and FM 646 and is 28.2 miles in length.

6. The Southern Alternative Alignment begins at the same location as the Northern Alternative Alignment and passes through the southern portion of the study area using a portion of SH 35 in the City of Alvin. This alignment alternative ends at the intersection of I-45 (S) and FM 646 and is 23.2 miles in length.

7. The Southern 2 Alternative Alignment begins at the intersection of SH 288 and FM 1462 and passes through the south-central portion of the study area using portions of FM 1462, SH 35 in the City of Alvin, and FM 517 east of the City of Alvin. This alignment alternative ends at the intersection of I-45 (S) and FM 646 and is 23.2 miles in length.

The Recommended Alternative Alignment that has emerged from the study is a combination of corridor components developed during the early stages of the project. The Recommended Alternative Alignment incorporates several miles of the existing SH 35 right-of-way in and south of the City of Alvin. The Recommended Alternative Alignment fulfills the need for and purpose of the project, provides feasible engineering alternatives, and balances the expected project benefits with the overall effects.

The Recommended Alternative Alignment for Segment B would require the acquisition of right-of-way, the adjustment of utility lines, and the possible impact to approximately 45 acres of potentially jurisdictional wetlands. The displacement of 13 residences and 9 commercial facilities would occur. Similar to all alignments considered, the Recommended Alternative Alignment would affect visual resources in the immediate area, present potential access impacts, and cause possible changes to community cohesion. No effects to schools, emergency response facilities, churches, cemeteries, archeological sites, historic properties, or endangered species are expected. Acquisition of right-of-way from a public park area may be required for the Recommended Alternative Alignment. No disproportionate effects to minority or low-income populations would result from this alternative. Even though a Recommended Alternative Alignment is presented, selection of the final Preferred Alternative Alignment will not be made until after the public comment period is completed, comments on the DEIS are received and considered, and the environmental effects are fully evaluated.

The Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Uniform Act) requires that comparable, decent, safe, and sanitary replacement housing within a person's financial means be made available to all affected residents. The State's Relocation Assistance Program will be available to all individuals, families, businesses, farmers, ranchers, and nonprofit organizations displaced as a result of the proposed project. Acquisitions of businesses and residences will be conducted in accordance with the Uniform Act, as amended in 1987. Relocation assistance would be made available to all businesses and residences without discrimination, consistent with the requirements of the Civil Rights Act of 1964 and the Housing and Urban Development Amendment of 1974. Representatives from the State of Texas will be available at the public hearing to answer questions and provide information concerning the property acquisition process and benefits offered by relocation assistance.

Copies of the DEIS and other information about the project may be obtained by contacting Mr. David Gornet at the Grand Parkway Association, at (713) 965-0871. The document is on file and available for review at the following locations:

(1) Grand Parkway Association, 4544 Post Oak Place, Suite 222, Houston, Texas 77027;
(2) Texas Department of Transportation, 7600 Washington Avenue, Houston, Texas 77007;
(3) Houston Public Library (Texas Room), 500 McKinney Street, Houston, Texas 77002;
(4) Alvin Library, 105 South Gordon Street, Alvin, Texas 77511;
(5) Manvel Library, 20514B Highway 6, Manvel, Texas 77578;
(6) Angleton Library, 401 East Cedar Street, Angleton, Texas 77515; and
(7) Helen Hall Library, 100 W. Walker Street, League City, Texas 77573.

The document can also be downloaded from www.grandpky.com.

TRD-201203284
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 20, 2012

Texas Water Development Board

Applications for June 2012

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #73639, a request from the City of Del Rio, 109 W. Broadway, Del Rio, Texas 78840, received January 17, 2012, for a loan in the amount of $5,000,000 from the Clean Water State Revolving Fund to finance wastewater system improvements, utilizing the pre-design funding option.

Project ID #73614, a request from the City of Marlin, P.O. Drawer 980, Marlin, Texas 76661-0980, received April 21, 2011, for a loan in the amount of $3,000,000 from the Clean Water State Revolving Fund to finance wastewater system improvements, utilizing the pre-design funding option.

Project ID #10366, a request from Kerr County, 700 Main Street, Kerrville, Texas 78028, received November 28, 2011, for financial assistance in the amount of $1,924,000 consisting of a loan in the amount of $570,000 and loan forgiveness in the amount of $1,290,000 from the Clean Water State Revolving Fund and a grant in the amount of $64,000 from the Economically Distressed Areas Program to finance planning, acquisition, and design relating to wastewater system improvements.

Project ID #62520, a request from the City of Marlin, P.O. Drawer 980, Marlin, Texas 76661-0980, received April 18, 2012, for financial assistance in the amount of $2,907,908 consisting of a loan in the amount of $1,680,000 and loan forgiveness in the amount of $1,227,908 from the Drinking Water State Revolving Fund to finance water system improvements, utilizing the pre-design funding option.

Project ID #73638, a request from the City of Brady, P.O. Box 351, Brady, Texas 76825, received January 17, 2012, for financial assistance in the amount of $500,000 consisting of a loan in the amount of $350,000 and loan forgiveness in the amount of $150,000 from the
Drinking Water State Revolving Fund to finance planning, acquisition, and design relating to water system improvements.

Project ID #10378, a request from the City of Brownsville, P.O. Box 3270, Brownsville, Texas 78523-3270, received November 30, 2011, for a grant in the amount of $2,000,000 from the Economically Distressed Areas Program to finance construction of first-time wastewater service in the Villanueva Colonia.

Project ID #10384, a request from East Aldine Municipal District, 5333 Aldine Mail Rt., Houston, Texas 77039, received February 6, 2012, for financial assistance in the amount of $10,466,094 in a grant and a loan from the Economically Distressed Areas Program to construct first-time water and wastewater service.

Project ID #10414, a request from the El Paso County Tornillo Water Improvement District, P.O. Box 136, Tornillo, Texas 79853, received June 17, 2011, for a grant in the amount of $140,000 from the Economically Distressed Areas Program to finance planning and design costs for wastewater system improvements.

Project ID #10430, a request from North Alamo Water Supply Corporation, 420 S. Doolittle Rd., Edinburg, Texas 78542, received December 16, 2011, for a grant in the amount of $1,154,000 from the Economically Distressed Areas Program to finance planning, acquisition, and design costs relating to wastewater system improvements.

Project ID #10410, a request from the El Paso Water Utilities, P.O. Box 511, El Paso, Texas 79961-0001, received April 2, 2012, for a grant in the amount of $570,000 from the Economically Distressed Areas Program to finance construction of water system improvements to the Turf Estates community.

Project ID #21639, a request from the San Jacinto River Authority, P.O. Box 329, Conroe, Texas 77305-0329, received April 26, 2012, for a loan in the amount of $230,530,000 from the Texas Water Development Fund to finance construction of a water supply project, utilizing the pre-design funding option.

TRD-201203072
Kenneth Petersen
General Counsel
Texas Water Development Board
Filed: June 13, 2012
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.


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)