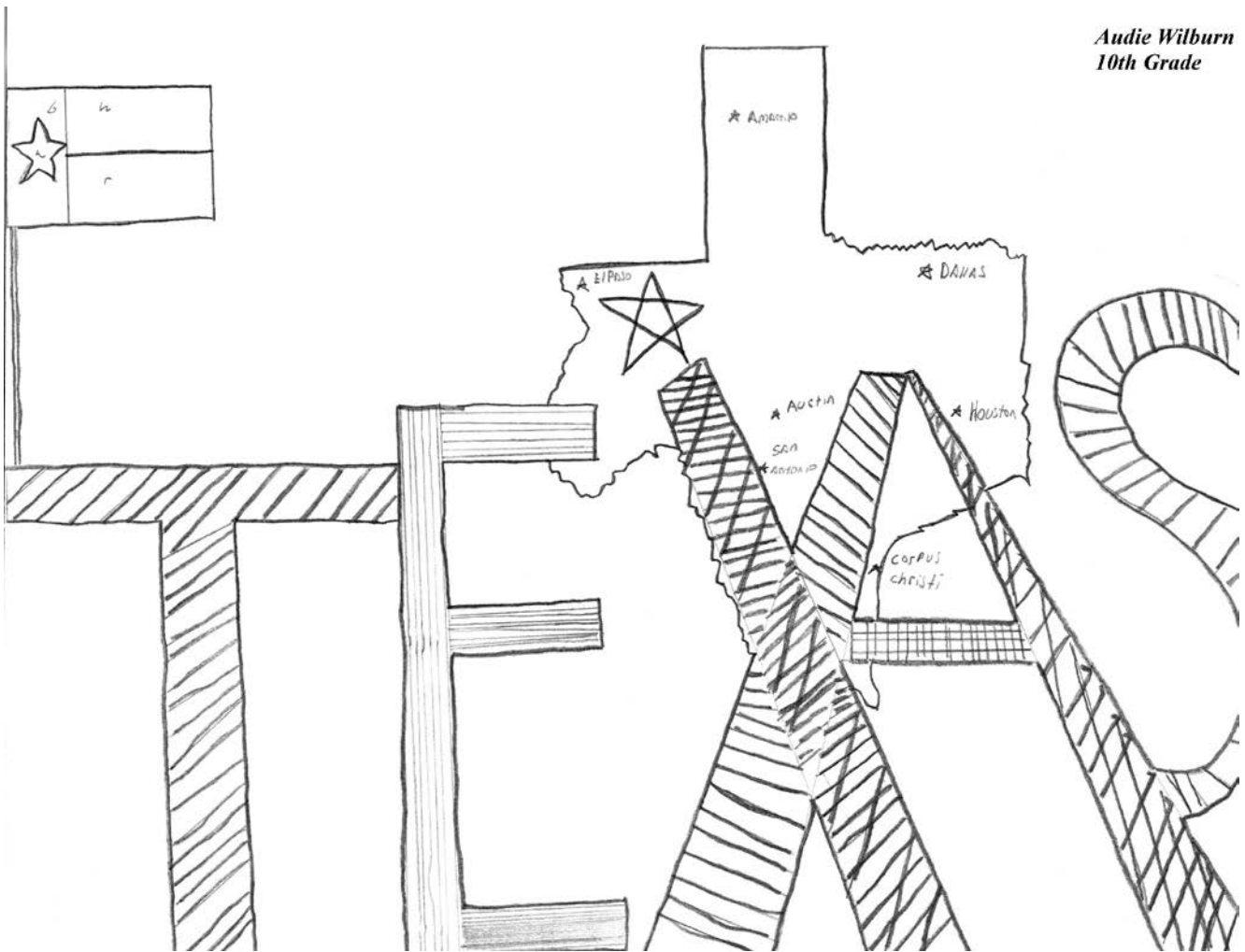

TEXAS REGISTER

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Audie Wilburn
10th Grade

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

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THE ATTORNEY GENERAL

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

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the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

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

Requests for Opinions

RQ-0045-KP

Requestor:

The Honorable Jane Nelson
Chair, Committee on Finance
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Re: Whether a water supply district may assign to another district certain duties and rights, including approval of the annual budget and contracting for certain services (RQ-0045-KP)

Briefs requested by September 21, 2015

RQ-0046-KP

Requestor:

The Honorable Jeri Yenne

Brazoria County Criminal District Attorney

111 East Locust Street
Angleton, Texas 77515

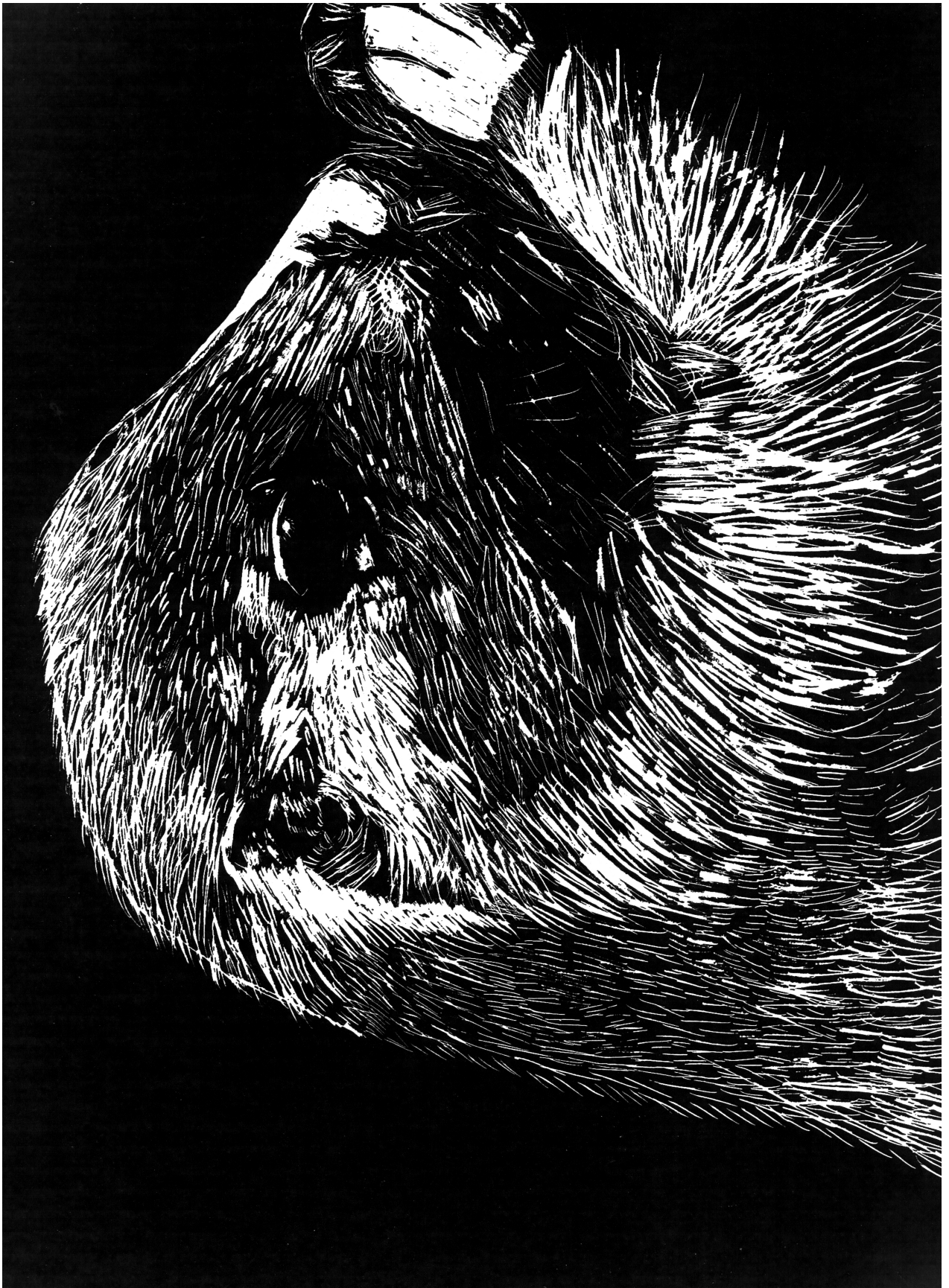
Re: Circumstances under which a truancy court may refer a child to the juvenile probation department, and circumstances under which a child may be prosecuted for delinquent conduct (RQ-0046-KP)

Briefs requested by September 23, 2015

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-201503405
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: August 25, 2015





EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

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

22 TAC §153.9

The Texas Appraiser Licensing and Certification Board (TALCB) adopts on an emergency basis amendments to 22 TAC §153.9, Applications. The amendments are adopted on an emergency basis to implement changes in Chapter 55, Texas Occupations Code, adopted by the 84th Legislature, which are effective September 1, 2015. The amendments align this rule with the statutory changes.

The amendments are adopted on an emergency basis under Texas Occupations Code, §1103.151, which authorizes the TALCB to adopt rules relating to certificates and licenses.

The statute affected by this emergency amendment is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected.

§153.9. Applications.

(a) A person desiring to be licensed as an appraiser, appraiser trainee, or temporary out-of-state appraiser shall file an application using forms prescribed by the Board or the Board's online application system, if available. The Board may decline to accept for filing an application that is materially incomplete or that is not accompanied by the appropriate fee. Except as provided by the Act, the Board may not grant a license to an applicant who has not:

- (1) paid the required fees;
- (2) satisfied any experience and education requirements established by the Act, Board rules, or the AQB;
- (3) successfully completed any qualifying examination prescribed by the Board;
- (4) provided all supporting documentation or information requested by the Board in connection with the application;
- (5) satisfied all unresolved enforcement matters and requirements with the Board; and
- (6) met any additional or superseding requirements established by the Appraisal Qualifications Board.

(b) An application may be considered void and subject to no further evaluation or processing if an applicant fails to provide informa-

tion or documentation within 60 days after the Board makes a written request for the information or documentation.

(c) A license is valid for the term for which it is issued by the Board unless suspended or revoked for cause and unless revoked, may be renewed in accordance with the requirements of §153.17 of this title (relating to Renewal or Extension of Certification and License or Renewal of Trainee Approval).

(d) The Board may deny a license to an applicant who fails to satisfy the Board as to the applicant's honesty, trustworthiness, and integrity.

(e) The Board may deny a license to an applicant who submits incomplete, false, or misleading information on the application or supporting documentation.

(f) When an application is denied by the Board, no subsequent application will be accepted within one year after the date of the Board's notice denying the application as required in §157.7 of this title (relating to Denial of a License).

(g) This subsection applies to an applicant who is a military service member, a military veteran, or the spouse of a person serving on active duty as a member of the armed forces of the United States.

(1) The Board shall waive the license application and examination fees for an applicant who is:

(A) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(B) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(2) [(4)] The Board shall issue on an expedited basis a license to an applicant who holds a current license issued by another state or jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license issued in this state.

(3) [(2)] The Board may issue a license to an applicant who within the five years preceding the application date, held the license in this state [that expired while the applicant lived in a country, territory, or state other than Texas for at least six months].

(4) [(3)] The Board may allow an applicant to demonstrate competency by alternative methods in order to meet the requirements for obtaining a particular license issued by the Board. For purposes of this subsection, the standard method of demonstrating competency is the specific examination, education, and/or experience required to obtain a particular license.

(5) [(4)] In lieu of the standard method(s) of demonstrating competency for a particular license and based on the applicant's circumstances, the alternative methods for demonstrating competency

may include any combination of the following as determined by the Board:

- (A) education;
- (B) continuing education;
- (C) examinations (written and/or practical);
- (D) letters of good standing;
- (E) letters of recommendation;
- (F) work experience; or
- (G) other methods required by the commissioner.

(h) This subsection applies to an applicant who is serving on active duty or is a veteran of the armed forces of the United States.

(1) The Board will credit any verifiable military service, training or education obtained by an applicant that is relevant to a license toward the requirements of a license.

(2) This subsection does not apply to an applicant who holds a restricted license issued by another jurisdiction.

(3) The applicant must pass the qualifying examination, if any, for the type of license sought.

(4) The Board will evaluate applications filed by an applicant who is serving on active duty or is a veteran of the armed forces of the United States consistent with the criteria adopted by the AQB and any exceptions to those criteria as authorized by the AQB.

(i) A person applying for license under subsection (g) or (h) of this section must also:

(1) submit the Board's approved application form for the type of license sought;

(2) submit the appropriate fee for that application; and

(3) submit the supplemental form approved by the Board applicable to subsection (g) or (h) of this section.

(j) The commissioner may waive any prerequisite to obtaining a license for an applicant as allowed by the AQB [issue a license under subsection (e) or (d) by endorsement in the same manner as the Texas Department of Licensing and Regulation to an applicant under this subsection].

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 18, 2015.

TRD-201503181

Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

Effective date: September 1, 2015

Expiration date: December 29, 2015

For further information, please call: (512) 936-3652



22 TAC §153.17

The Texas Appraiser Licensing and Certification Board (TALCB) adopts on an emergency basis amendments to 22 TAC §153.17, Renewal or Extension of License. The amendments are adopted

on an emergency basis to implement changes in Chapter 55, Texas Occupations Code, adopted by the 84th Legislature, which are effective September 1, 2015. The amendments align this rule with the statutory changes.

The amendments are adopted on an emergency basis under Texas Occupations Code, §1103.151, which authorizes the TALCB to adopt rules relating to certificates and licenses.

The statute affected by this emergency amendment is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected.

§153.17. *Renewal or Extension of License.*

(a) General Provisions.

(1) The Board will send a renewal notice to the license holder at least 90 days prior to the expiration of the license. It is the responsibility of the license holder to apply for renewal in accordance with this chapter, and failure to receive a renewal notice from the Board does not relieve the license holder of the responsibility to timely apply for renewal.

(2) A license holder renews the license by timely filing an application for renewal, paying the appropriate fees to the Board, and satisfying all applicable education and experience requirements.

(3) An application for renewal or extension received by the Board is timely and acceptable for processing if it is:

(A) complete;

(B) accompanied with payment of proper fees; and

(C) postmarked by the U.S. Postal Service, accepted by an overnight delivery service, or accepted by the Board's online processing system on or before the date of expiration.

(b) Certified General, Certified Residential and State Appraiser License Holders.

(1) A license holder may renew the license by timely filing an application for renewal, paying the appropriate fees to the Board and, unless renewing on inactive status, satisfying ACE requirements.

(2) In order to renew on active status, the license holder must complete the ACE report form approved by the Board and, within 20 days of filing the renewal, submit course completion certificates for each course that was not already submitted by the provider and reflected in the license holder's electronic license record.

(A) The Board may request additional verification of ACE submitted in connection with a renewal. If requested, such documentation must be provided within 20 days after the date of request.

(B) Knowingly or intentionally furnishing false or misleading ACE information in connection with a renewal is grounds for disciplinary action up to and including license revocation.

(3) The Board may grant, at the time it issues a license renewal, an extension of time of up to 60 days after the expiration date of the previous license to complete ACE required to renew a license, subject to the following:

(A) The license holder must:

(i) timely submit the completed renewal form with the appropriate renewal fees;

(ii) complete an extension request form; and

(iii) pay an extension fee of \$200.

(B) ACE courses completed during the 60-day extension period apply only to the current renewal and may not be applied to any subsequent renewal of the license.

(C) A person whose license was renewed with a 60-day ACE extension:

(i) will not perform appraisals in a federally related transaction until verification is received by the Board that the ACE requirements have been met;

(ii) may continue to perform appraisals in non-federally related transactions under the renewed license;

(iii) must, within 60 days after the date of expiration of the previous license, complete the approved ACE report form and submit course completion certificates for each course that was not already submitted by the provider and reflected in the applicant's electronic license record; and

(iv) will have the renewed license placed in inactive status if, within 60 days of the previous expiration date, ACE is not completed and reported in the manner indicated in paragraph (2) of this subsection. The renewed license will remain on inactive status until satisfactory evidence of meeting the ACE requirements has been received by the Board and the fee to return to active status required by §153.5 of this title (relating to Fees) has been paid.

(c) Appraiser Trainees.

(1) Appraiser trainees must maintain an appraisal log and appraisal experience affidavits on forms approved by the Board, for the license period being renewed. It is the responsibility of both the appraiser trainee and the sponsor to ensure the appraisal log is accurate, complete and signed by both parties at least quarterly or upon change in sponsors. The appraiser trainee will promptly provide copies of the experience logs and affidavits to the Board upon request.

(2) Appraiser trainees may not obtain an extension of time to complete required continuing education.

(d) Renewal of Licenses for Persons on Active Duty. A person who is on active duty in the United States armed forces may renew an expired license without being subject to any increase in fee imposed in his or her absence, or any additional education or experience requirements if the person:

(1) did not provide appraisal services while on active duty;

(2) provides a copy of official orders or other documentation acceptable to the Board showing the person was on active duty during the last renewal period;

(3) applies for the renewal within two years [90 days] after the person's active duty ends;

(4) pays the renewal application fees in effect when the previous license expired; and

(5) completes ACE requirements that would have been imposed for a timely renewal.

(e) Expiration and Reapplication. If an application is filed within six months of the expiration of a previous license, the applicant shall also provide satisfactory evidence of completion of any continuing education that would have been required for a timely renewal of the previous license. If the application for license is filed more than six months after the expiration of the previous license, the applicant must meet all then-current requirements for license, including retaking and passing the examination.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

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For further information, please call: (512) 936-3652

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CHAPTER 157. RULES RELATING TO
PRACTICE AND PROCEDURE
SUBCHAPTER C. POST HEARING

22 TAC §157.18

The Texas Appraiser Licensing and Certification Board (TALCB) adopts on an emergency basis amendments to 22 TAC §153.17, Renewal or Extension of License. The amendments are adopted on an emergency basis to implement changes in Chapter 2001, Texas Government Code, adopted by the 84th Legislature, which are effective September 1, 2015. The amendments align this rule with the statutory changes.

The amendments are adopted on an emergency basis under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules relating to certificates and licenses, and Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules necessary to administer Chapter 1104.

The statutes affected by this emergency amendment are Chapters 1103 and 1104, Texas Occupations Code. No other statute, code or article is affected.

§157.18. Motions for Rehearing; Finality of Decisions.

(a) Motions for rehearing in proceedings under Chapter 1103, Texas Occupations Code, are governed by §§2001.144 - 2001.147, Texas Government Code, and this section. [Filing times: A motion for rehearing must be filed within 20 days after a party has been notified, either in person or by certified mail; return receipt requested; of the final decision or order made by the Board.]

(b) Motions for rehearing in proceedings under Chapter 1104, Texas Occupations Code, are governed by §1104.216, Texas Occupations Code, §§2001.144 - 2001.147, Texas Government Code, and this section.

(c) A timely-filed motion for rehearing is a prerequisite to appeal except as provided in section 157.17 of this subchapter.

(d) Replies to a motion for rehearing may be filed as provided in Chapter 2001, Texas Government Code.

(e) [(b)] A motion for rehearing shall set forth the particular finding of fact, conclusion of law, ruling, or other action which the complaining party asserts caused substantial injustice to the party and was in error such as violation of a constitutional or statutory provision, lack of authority, unlawful procedure, lack of substantial evidence, abuse of discretion, other error of law, or other good cause specifically described in the motion. In the absence of specific grounds in the motion, the Board shall presume that the motion should be overruled.

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 533. PRACTICE AND PROCEDURE SUBCHAPTER B. GENERAL PROVISIONS RELATING TO PRACTICE AND PROCEDURE

22 TAC §§533.3, 533.7, 533.8

The Texas Real Estate Commission (TREC) adopts on an emergency basis amendments to 22 TAC §533.3, Filing and Notice; §533.7, Final Decisions and Orders; and §533.8, Motions for Rehearing; Finality of Decisions, in Chapter 533, Practice and Procedure.

The amendments are adopted on an emergency basis to align the rules with statutory changes to Chapter 2001, Texas Government Code, adopted by the 84th Legislature. Since the statutory changes in Chapter 2001, Texas Government Code are effective September 1, 2015, the Commission needs to adopt these rule changes on fewer than 30 days notice so the rules will be in compliance with State law on September 1, 2015.

The amendments are adopted on an emergency basis under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by these emergency amendments are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the emergency amendments.

§533.3. *Filing and Notice.*

(a) (No change.)

(b) If after investigation of a possible violation and the facts surrounding that possible violation the Commission determines that a violation has occurred, the Commission may issue a written Notice of Alleged Violation to the Respondent. The Commission shall provide notice in accordance with the APA. ~~[The Notice must:]~~

~~[(1) be delivered by personal service, or be sent to the Respondent's mailing address by certified or registered mail; and]~~

~~[(2) include:]~~

~~[(A) a brief summary of each alleged violation;]~~

~~[(B) a statement of the sanctions recommended;]~~

~~[(C) a statement of the right of the Respondent to a hearing; and]~~

~~[(e) Board action. Board action on a motion must be taken no later than the 20th day after the date the commissioner is served with the motion for rehearing. If Board action is not taken within the 20 day period, the motion for rehearing is overruled by operation of law.]~~

~~[(d) A decision is final, in the absence of a timely motion for rehearing, on the expiration of the period for filing a motion for rehearing. A decision is final and appealable on the date of rendition of the order overruling a motion for rehearing, or on the date the motion for rehearing is overruled by operation of law.]~~

~~[(f) [(e)] Any party may request oral arguments before the Board prior to the final disposition of the motion for rehearing. Oral arguments will be conducted in accordance with paragraphs (1) - (5) of this subsection.~~

(1) The chairperson or the Board member designated by the chairperson to preside (the presiding member) shall announce the case. Upon the request of any party, the presiding member may conduct a prehearing conference with the parties and their attorneys of record. The presiding member may announce reasonable time limits for any oral arguments to be presented by the parties.

(2) The hearing on the motion shall be limited to a consideration of the grounds set forth in the motion. Testimony by affidavit or documentary evidence such as excerpts of the record before the presiding officer may be offered in support of, or in opposition to, the motion; provided, however, a party offering affidavit testimony or documentary evidence must provide the other party with copies of the affidavits or documents at the time the motion is filed. New evidence may not be presented on the substance of the case unless the party submitting the evidence can establish that the new evidence was not reasonably available at the time of the original hearing or the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the original hearing.

(3) In presenting oral arguments, the party filing the motion will have the burden of proof and shall open and close. The party responding to the motion may offer rebuttal arguments. Parties may request an opportunity for additional rebuttal subject to the discretion of the presiding member.

(4) After being recognized by the presiding member, the members of the Board may ask questions of the parties. If a party is represented by counsel, the questions must be directed to the party's attorney. Questions must be limited to the grounds asserted for the motion to be granted and to the arguments made by the parties.

(5) Upon the conclusion of oral arguments, questions by the members of the Board, and any discussion by the member of the Board, the presiding member shall call for a vote on the motion. A member of the Board need not make a separate motion or second a motion filed by a party. The presiding member may vote on the motion. A motion may be granted only if a majority of the members present and voting vote in favor of the motion. In the event of a tie vote, the presiding member shall announce that the motion is overruled.

~~[(g) [(f)] A decision is final and appealable on the date rendered if:~~

~~[(1) the Board finds that an imminent peril to the public health, safety or welfare requires immediate effect; and]~~

~~[(2) the Board's [in which event the] decision or order recites this [shall recite the] finding and the fact that the decision is final and effective on the date rendered.~~

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

~~[(D)] a notice that failure to answer will result in a default order against Respondent.~~

~~[(e)] The Notice may also be sent by email or other means, which may serve as evidence of actual notice.~~

~~(c) [(d)] Not later than the 20th day after the date on which the Notice of Alleged Violation is sent, the Respondent may:~~

~~(1) accept the determination of the Commission, including sanctions recommended by the Commission; or~~

~~(2) make a written request for a hearing on that determination.~~

~~[(e)] The Commission shall provide notice in accordance with the APA and Texas Occupations Code, Chapters 1101 and 1102.~~

~~(d) [(f)] Upon receipt of a written request for hearing, the Commission shall submit a request to docket case to SOAH accompanied by copies of relevant documents giving rise to a contested case.~~

~~(e) [(g)] When the Commission submits a request to docket case with SOAH, SOAH acquires jurisdiction over a contested case until SOAH issues final amendments or corrections to the Proposal for Decision. In case of a conflict with the Commission's rules, SOAH's rules control while SOAH has jurisdiction.~~

~~(f) [(h)] Pleadings, other documents, and service to SOAH shall be filed in accordance with SOAH's rules.~~

~~(g) [(i)] If a real estate salesperson is a Respondent, the Commission will notify the salesperson's sponsoring broker of the hearing. If an apprentice inspector or real estate inspector is a Respondent, the Commission will notify the sponsoring professional inspector of the hearing. Notice under this subsection need not be provided by certified or registered mail.~~

~~(h) [(j)] Any document served upon a party is prima facie evidence of receipt, if it is directed to the party's mailing address or email address. This presumption is rebuttable. Failure to claim properly addressed certified or registered mail will not support a finding of non-delivery.~~

§533.7. Final Decisions and Orders.

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

~~(g) Final orders on contested cases shall be in writing and signed by the presiding officer of the Commission. Final orders shall include findings of fact and conclusions of law separately stated from disciplinary actions imposed and administrative penalties assessed. Parties will be notified [either personally or by mail of any decision] and [will be] given a copy of the decision as provided by the APA. A decision is final as provided by the APA. [A party notified by mail of a final decision or order is presumed to have been notified on the third day after the date on which the notice is mailed.]~~

~~(h) - (i) (No change.)~~

§533.8. Motions for Rehearing[; Finality of Decisions].

~~(a) The timely filing of a motion for rehearing is a prerequisite to appeal. [A decision is final, in the absence of a timely motion for rehearing, on the expiration of the period for filing a motion for rehearing. A decision is final and appealable on the date the order overrules a motion for rehearing, or on the date the motion for rehearing is overruled by operation of law.]~~

~~(b) Motions for rehearing are controlled by the APA [Texas Government Code], §§2001.145 - 2001.147 and this section.~~

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

~~(e) A petition for judicial review must be filed in a District Court of Travis County Texas [within 30 days after the order is final and appealable,] as provided by the APA [Texas Government Code, Title 10, Subtitle A, Chapter 2001]. A party filing a petition for judicial review must also comply with the requirements of Texas Occupations Code, §1101.707.~~

~~(f) - (g) (No change.)~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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For further information, please call: (512) 936-3092



CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §535.51

The Texas Real Estate Commission (TREC) adopts on an emergency basis amendments to 22 TAC §§535.51, General Requirements for a Real Estate License, in Chapter 535, General Provisions.

The amendments are adopted on an emergency basis to align the rules with statutory changes in SB 1307 adopted by the 84th Legislature to be effective September 1, 2015. Since the statutory changes in SB 1307 are effective September 1, 2015, the Commission needs to adopt these rule changes on fewer than 30 days notice so the rules will be in compliance with State law on September 1, 2015.

The amendments extend expedited license processing to active military service members and veterans and waive certain license and application fees for applicants who meet designated criteria.

The amendments are adopted on an emergency basis under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by these emergency amendments is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the emergency amendments.

§535.51. General Requirements for a Real Estate License.

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

~~(c) License [Expedited license] for military service members, military veterans, or military spouses. This subsection applies to an applicant who is a military service member, a military veteran, or the spouse of a person serving on active duty as a member of the armed forces of the United States.~~

(1) The Commission shall waive the license application and examination fees for an applicant who is:

(A) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(B) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(2) The Commission shall issue on an expedited basis a license to an applicant who holds a current certificate or license issued by a country, territory, or state other than Texas [~~for other than Texas~~] that has licensing requirements that are substantially equivalent to the requirements for the certificate or license issued in Texas.

(3) [~~(2)~~] The Commission may issue a license to an applicant who, within the five years preceding the application date, held the license in Texas [~~that expired while the applicant lived in a country, territory, or state other than Texas for at least six months~~].

(4) [~~(3)~~] The Commission may allow an applicant to demonstrate competency by alternative methods in order to meet the requirements for obtaining a particular license issued by the Commission. For purposes of this subsection, the standard method of demonstrating competency is the specific examination, education, and/or experience required to obtain a particular license.

(5) [~~(4)~~] In lieu of the standard method(s) of demonstrating competency for a particular license and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the Commission:

- (A) education;
- (B) continuing education;
- (C) examinations (written and/or practical);
- (D) letters of good standing;
- (E) letters of recommendation;
- (F) work experience; or
- (G) other methods required by the administrator.

(d) (No change.)

(f) The administrator may waive any prerequisite to obtaining a license for an applicant issued [issue a license] under subsection (c) or (d) [by endorsement in the same manner as the Texas Department of Licensing and Regulation to an applicant under this subsection].

(g) - (h) (No change.)

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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For further information, please call: (512) 936-3092

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SUBCHAPTER I. LICENSE RENEWAL

22 TAC §535.91

The Texas Real Estate Commission (TREC) adopts on an emergency basis amendments to 22 TAC §535.91, Renewal of a Real Estate License, in Chapter 535, General Provisions.

The amendments are proposed on an emergency basis to align the rule with statutory changes in SB 1307, adopted by the 84th Legislature, to be effective September 1, 2105. Since the statutory changes in SB 1307 are effective September 1, 2015, the Commission needs to adopt these rule changes on fewer than 30 days notice so the rules will be in compliance with State law on September 1, 2015.

The amendments allow an active duty military service member two additional years to renew a license.

The amendments are adopted on an emergency basis under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by these emergency amendments is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the emergency amendments.

§535.91. Renewal of a Real Estate License.

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

(i) Renewal of license for [~~active duty~~] military service member. A license holder on active duty in the United States armed forces is entitled to two years of additional time to [~~servicing outside the State of Texas may~~] renew an expired license without being subject to any increase in fee, any education or experience requirements or examination if the license holder:

(1) provides a copy of official orders or other official documentation acceptable to the Commission showing that the license holder was on active duty [~~outside the State of Texas~~] during the license holder's [licensee's] last renewal period; and

~~[(2) applies for the renewal not later than the 90th day after the date the license holder's active duty ends; and]~~

(2) [~~(3)~~] pays the renewal application fee in effect when the previous license expired.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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Texas Real Estate Commission

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.208, §535.216

The Texas Real Estate Commission (TREC) adopts on an emergency basis amendments to 22 TAC §535.208, Application for a License, and §535.216, Renewal of License in Subchapter R, Real Estate Inspectors.

The amendments are adopted on an emergency basis to align these rules with statutory changes to Chapter 55, Texas Occupations Code, adopted by the 84th Legislature, to be effective September 1, 2015. Since the statutory changes in Chapter 55, Texas Occupations Code are effective September 1, 2015, the Commission needs to adopt these rule changes on fewer than 30 days notice so the rules will be in compliance with State law on September 1, 2015.

The amendments extend expedited processing to active military members and veterans, waive certain license and application fees for applicants who meet designated criteria, and allow active duty military members two additional years to renew a license.

The amendments are adopted on an emergency basis under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by these emergency amendments is Chapter 1102, Texas Occupations Code. No other statute, code or article is affected by the emergency amendments.

§535.208. Application for a License.

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

(c) License [~~Expedited license~~] for military service members, military veterans, or military spouses. This subsection applies to an applicant who is a military service member, a military veteran, or the spouse of a person serving on active duty as a member of the armed forces of the United States.

(1) The Commission shall waive the license application and examination fees for an applicant who is:

(A) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(B) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(2) The Commission shall issue on an expedited basis a license to an applicant who holds a current certificate or license issued by a country, territory, or state other than Texas that has licensing requirements that are substantially equivalent to the requirements for the certificate or license issued in Texas.

(d) Credit for military service. [~~Expedited license for military spouses.~~] This subsection applies to an applicant who is [the spouse of a person] serving on active duty as a member of the armed forces of the United States. [~~The Commission shall issue on an expedited basis a license to an applicant who holds a current certificate or license issued by a country, territory, or state other than Texas for other than Texas~~

that has licensing requirements that are substantially equivalent to the requirements for the certificate or license issued in Texas.]

(1) The Commission shall credit any verifiable military service, training or education obtained by an applicant that is relevant to a license toward the requirements of a license.

(2) This subsection does not apply to an applicant who holds a restricted license issued by another jurisdiction.

(3) The applicant must pass the qualifying examination for the type of license sought.

(e) (No change.)

(f) The administrator may waive any prerequisite to obtaining a license for an applicant issued [issue a license] under subsections (c) or (d) of this section [by endorsement in the same manner as the Texas Commission of Licensing and Regulation to an applicant under this subsection].

(g) - (h) (No change.)

§535.216 Renewal of License

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

(i) Renewal of license for military service member. A license holder on active duty in the United States armed forces is entitled to two years of additional time to renew an expired license without being subject to any increase in fee, any education or experience requirements or examination if the license holder:

(1) provides a copy of official orders or other official documentation acceptable to the Commission showing that the license holder was on active duty during the license holder's last renewal period; and

(2) pays the renewal application fee in effect when the previous license expired.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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Texas Real Estate Commission

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CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §537.39

The Texas Real Estate Commission (TREC) adopts on an emergency basis amendments to 22 TAC Chapter 537.37 regarding Professional Agreements and Standard Contracts.

Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contracts for the sale of real property. These forms are drafted and recommended for adoption by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by

the President of the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the governor.

The Broker Lawyer Committee recommended revisions to the Condominium Resale Certificate to conform to new statutory disclosure requirements enacted by the 84th Legislature in SB 1168, which are effective September 1, 2015. The Commission agreed to promulgate this form for use by license holders. Since the statutory changes in SB 1168 are effective September 1, 2015, the Commission needs to adopt this rule change on fewer than 30 days notice so the form adopted by reference in the rule will be in compliance with State law on September 1, 2015.

The amendments are adopted on an emergency basis under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by emergency amendments is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the emergency amendments.

§537.39. *Standard Contract Form TREC No. 32-4 [3].*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 32-4 [3] approved by the Commission in 2015 [2012] for use as a condominium resale certificate.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 2. CHRONIC WASTING DISEASE - MOVEMENT OF BREEDER DEER

31 TAC §§65.90 - 65.93

Pursuant to Parks and Wildlife Code, §12.027, and Government Code, §2001.034, the executive director of the Texas Parks and Wildlife Department (the department) adopts, on an emergency basis, new §§65.90 - 65.93, concerning Disease Detection and Response. The new emergency rules will be constituted as new

Division 2 within Chapter 65, Subchapter B, entitled Chronic Wasting Disease - Movement of Breeder Deer. Under Parks and Wildlife Code, Chapter 43, Subchapter L, the department regulates the possession of captive-raised deer within a facility for breeding purposes and the release of such deer into the wild. To the extent that any provision of the new division conflicts with any other provision of Chapter 65, the new division will prevail, except as noted.

For the reasons explained in this preamble, the department's executive director has determined that the presence of CWD poses an immediate danger to white-tailed and mule deer, which are species authorized to be regulated by the department, and that the adoption of these rules on an emergency basis with fewer than 30 days' notice is necessary to address this immediate danger.

On June 30, 2015, the department received confirmation that a two-year-old white-tailed deer held in a deer breeding facility in Medina County ("index facility") had tested positive for chronic wasting disease (CWD). Subsequent testing confirmed the presence of CWD in additional white-tailed deer at the index facility. The source of the CWD at the index facility is unknown at this time. Within the last five years, the index facility accepted deer from 30 other Texas deer breeders and transferred 835 deer to 147 separate sites (including 96 deer breeding facilities, 46 release sites, and two Deer Management Permit (DMP) facilities in Texas, as well as two destinations in Mexico). (A DMP is a permit issued by the department under rules adopted pursuant to Parks and Wildlife Code, Chapter 43, Subchapters R and R-1, that allows the temporary possession of free-ranging white-tailed or mule deer for breeding purposes.) The department estimates that more than 728 locations in Texas (including 384 deer breeders) either received deer from the index facility or received deer from a deer breeder who had received deer from the index facility, representing approximately 30% of the total number of deer breeders in the state.

As provided in the Texas Administrative Code, the emergency rules will initially be in effect for no longer than 120 days, but may be extended for an additional 60 days. It is the intent of the department to also publish proposed rules pursuant to the Administrative Procedure Act's notice and comment rulemaking process.

The emergency rules impose CWD testing requirements and movement restrictions for white-tailed deer and mule deer held under the authority of deer breeder's permits issued by the department. The new rules are a result of cooperation between the department and the Texas Animal Health Commission (TAHC) to protect susceptible species of exotic and native wildlife from CWD. TAHC is the state agency authorized to manage "any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl, regardless of whether the disease is communicable, even if the agent of transmission is an animal species that is not subject to the jurisdiction" of TAHC. Texas Agricultural Code §161.041(b).

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated; however, there is no scientific evidence to indicate that CWD is transmissible to humans. What is known is that CWD is invariably fatal, and is transmitted both directly (through deer-to-deer contact) and indirectly (through environmental contamination). Moreover, a high prevalence of the disease in wild populations correlates with deer population declines and there is evidence that hunters tend to avoid areas of high CWD prevalence. The implications of CWD for Texas and its multi-billion dollar ranching, hunting, and wildlife management economies are expected to be significant, unless contained and controlled.

The department has engaged in several rulemakings over the years to address the threat posed by CWD. In 2005, the department closed the Texas border to the entry of out-of-state captive white-tailed and mule deer and increased regulatory requirements regarding disease monitoring and record keeping. (The closing of the Texas border to entry of out-of-state captive white-tailed and mule deer was updated, effective in January 2010, to address other disease threats to white-tailed and mule deer (35 TexReg 252).)

On July 10, 2012, the department confirmed that two mule deer sampled in the Texas portion of the Hueco Mountains tested positive for CWD. In response, the department and the Texas Animal Health Commission (TAHC) convened the CWD Task Force, comprised of wildlife-health professionals and cervid producers, to advise the department on the appropriate measures to be taken to protect white-tailed and mule deer in Texas. Based on recommendations from the CWD Task Force, the department adopted new rules in 2013 (37 TexReg 10231) to implement a CWD containment strategy in far West Texas. The rules among other things require deer harvested in a specific geographical area to be presented at check stations to be tested for CWD.

The department has been concerned for over a decade about the possible emergence of CWD in wild and captive deer populations in Texas. Since 2002, more than 28,209 "not detected" CWD test results were obtained from free-ranging (i.e., not breeder) deer in Texas. Deer breeders have submitted 12,759 "not detected" test results to the department. The intent of the new emergency rules is to reduce the probability of CWD being spread from facilities where it might exist and to increase the probability of detecting CWD if it does exist.

The new emergency rules therefore set forth specific testing requirements for deer breeders, which would have to be satisfied in order to move deer to other deer breeders or for purposes of release. The new emergency rules also impose similar testing requirements on sites where breeder deer are liberated (release sites). The other significant component of the rules is that they restrict the release of breeder deer solely to enclosures surrounded by a fence of at least seven feet in height and that is capable of retaining deer at all times. Because deer held under deer breeder's permits are frequently liberated for stocking and/or hunting purposes (27,684 in 2014), the potential for disease transmission to free-ranging deer is significant, given that the source of CWD in the index facility is unknown and the large number of deer that have been moved to other breeding facilities and/or released to the wild.

The emergency action is necessary to protect the state's white-tailed and mule deer populations, as well as the associated hunting and deer breeding industries. To minimize the severity of biological and economic impacts resulting from CWD, the rules implement a more rigorous testing protocol within certain deer breeding facilities and at certain release sites. The new emergency rules allow most breeder deer to continue to be released because the department believes that the need to protect free-ranging populations must be balanced with the interests of the more than 1,300 deer breeders in the state.

The rules are adopted on an emergency basis under Parks and Wildlife Code, §12.027, which authorizes the department's executive director to adopt emergency rules if there is an immediate danger to a species authorized to be regulated by the department, and under Government Code §2001.034, which authorizes a state agency to adopt such emergency rules without prior notice or hearing. In addition, Parks and Wildlife Code, Chapter 43, Subchapter L, authorizes the department to regulate the possession of white-tailed and mule deer for scientific, management, and propagation purposes.

§65.90. Definitions.

(a) The following words and terms shall have the following meanings, except in cases where the context clearly indicates otherwise.

(1) Accredited testing facility--A laboratory approved by the United States Department of Agriculture to test white-tailed deer or mule deer for CWD.

(2) Breeder deer--A white-tailed deer or mule deer possessed under a permit issued by the department pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter.

(3) CWD--Chronic wasting disease.

(4) CWD-positive facility--A facility where CWD has been confirmed.

(5) Deer breeder--A person who holds a valid deer breeder's permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter.

(6) Deer breeding facility (breeding facility)--A facility permitted to hold breeder deer under a permit issued by the department pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter.

(7) Department (department)--Texas Parks and Wildlife Department

(8) Eligible mortality--A breeder deer that has died within a deer breeding facility and:

(A) is 16 months of age or older; or

(B) if the deer breeding facility is enrolled in the TAHC CWD Herd Certification Program, is 12-months of age or older.

(9) Exposed deer--A white-tailed deer or mule deer that:

(A) is in a CWD-positive facility; or

(B) was in a CWD-positive facility within the five years preceding the confirmation of CWD in that facility.

(10) Hunter-harvested deer--A deer required to be tagged under the provisions of Subchapter A of this chapter (relating to Statewide Hunting Proclamation).

(11) Landowner (owner)--Any person who has an ownership interest in a tract of land, and includes a landowner's authorized agent.

(12) Landowner's authorized agent--A person designated by a landowner to act on the landowner's behalf.

(13) NUES tag--An ear tag approved by the United States Department of Agriculture for use in the National Uniform Eartagging System (NUES).

(14) Originating facility--A facility that is registered in TWIMS and is authorized to transfer breeder deer.

(15) Reconciled herd--The deer held in a breeding facility for which the department has determined that the deer breeder has accurately reported every birth, mortality, and transfer of deer in the previous reporting year.

(16) Release site--A specific tract of land that has been approved by the department for the release of breeder deer under this division.

(17) Reporting year--For a deer breeder, the period of time from April 1 of one calendar year to March 31 of the next calendar year.

(18) RFID tag--A button-type ear tag conforming to the 840 standards of the United States Department of Agriculture's Animal Identification Number system.

(19) Status--The level of testing required by this division for any given deer breeding facility or release site. For the transfer categories established in §65.92(b) of this title (relating to Transfer Categories and Requirements), the highest status is Transfer Category 1 (TC 1) and the lowest status is Transfer Category 3 (TC3). For the release site classes established in §65.93(b) of this title (relating to Release Sites - Qualifications and Testing Requirements), Class I is the highest status and Class III is the lowest.

(20) Tier 1 facility--A deer breeding facility that has:

(A) received an exposed deer within the previous five years; or

(B) transferred deer to a CWD-positive facility within the five-year period preceding the confirmation of CWD in the CWD-positive facility.

(21) TAHC--Texas Animal Health Commission.

(22) TAHC CWD Herd Certification Program--The disease-testing and herd management requirements set forth in 4 TAC §40.3 (relating to Herd Status Plans for Cervidae).

(23) TAHC Herd Plan--A set of requirements for disease testing and management developed by TAHC for a specific facility.

(24) TWIMS--The department's Texas Wildlife Information Management Services (TWIMS) online application.

§65.91. General Provisions.

(a) To the extent that any provision of this division conflicts with any other provision of this chapter, this division prevails.

(b) Except as provided in this division, no live breeder deer may be transferred anywhere for any purpose.

(c) Notwithstanding any other provision of this chapter, no person shall introduce into or remove breeder deer from or allow or authorize breeder deer to be introduced into or removed from any deer breeding facility for which a CWD test result of "detected" has been obtained from an accredited testing facility. The provisions of this subsection take effect immediately upon the notification of a CWD 'detected'

test result for a deer breeding facility, and continue in effect until the department expressly authorizes the resumption of permitted activities at that facility.

(d) No exposed breeder deer may be transferred from a breeding facility unless expressly authorized in a TAHC herd plan and then only in accordance with the provisions of this division.

(e) A breeding facility or release site that receives breeder deer from an originating facility of lower status automatically assumes the status of the originating facility and becomes subject to the testing and release requirements of this division at that status.

(f) A CWD test is not valid unless it is performed by an accredited testing facility on the obex of an eligible mortality, which may be collected by anyone. A medial retropharyngeal lymph node collected from the eligible mortality by an accredited veterinarian or other person approved by the department may be submitted to an accredited testing facility for testing in addition to the obex of the eligible mortality.

(g) Unless expressly provided otherwise in this division, all applications and notifications required by this division shall be submitted electronically via TWIMS or by another method expressly authorized by the department.

(h) A person who is subject to the provisions of this division shall comply with the provisions of TAHC regulations at 4 TAC Chapter 40 (relating to Chronic Wasting Disease) that are applicable to white-tailed or mule deer.

(i) The provisions of this division that affect TC 1 facilities take effect immediately; the remaining provisions of this division take effect upon notification of deer breeders by the department or at 11:59 p.m. on August 24, 2015, whichever is sooner.

§65.92. Transfer Categories and Requirements.

(a) General.

(1) A breeding facility that is a TC 1, Transfer Category 2 (TC 2), or TC 3 facility may transfer breeder deer under a valid transfer permit that has been activated and approved by the department as provided in §65.610(e) of this title (relating to Transfer of Deer) to:

(A) another breeding facility;

(B) an approved release site as provided in §65.93 of this division (relating to Release Sites - Qualifications and Testing Requirements);

(C) a DMP facility under Chapter 65, Subchapter D of this title (relating to Deer Management Permits); or

(D) to another person for nursing purposes.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, a breeding facility is prohibited from transferring breeder deer anywhere for any purpose if:

(A) such a transfer is not authorized pursuant to a TAHC Herd Plan associated with a hold order or quarantine;

(B) "not detected" CWD test results have been submitted for less than 20% of eligible mortalities at the breeding facility since May 23, 2006;

(C) the breeding facility has an unreconciled herd inventory; or

(D) the breeding facility is not in compliance with the provisions of §65.608 of this title (relating to Annual Reports and Records).

(3) A deer breeder may not transfer a breeder deer to a Class III release site unless the deer has been tagged by attaching a button-type RFID or NUES tag approved by the department to one ear.

(4) A deer breeding facility that is permitted on or after the effective date of this division will assume the lowest status among all originating facilities from which deer are received; provided, however, a breeding facility shall not assume TC 1 status unless it meets the criteria established in subsection (b)(1) of this section.

(b) Types of Facilities.

(1) TC 1. A breeding facility is a TC 1 facility if:

(A) it is not a Tier 1 facility; and

(B) it has "fifth-year" or "certified" status in the TAHC CWD Herd Certification Program.

(2) TC 2. A breeding facility is a TC 2 facility if:

(A) it is not a Tier 1 facility; and

(B) CWD test results of "not detected" have been returned for one of the following values, whichever represents the lowest number of tested breeder deer:

(i) 4.5 percent or more of the breeder deer held within the facility during the immediately preceding two reporting years, based on the average population of deer in the facility that were at least 16 months of age on March 31 of each year (including eligible mortalities for those years); or

(ii) 50 percent of all eligible mortalities from the preceding two reporting years, provided at least one eligible mortality was tested.

(3) TC 3.

(A) A breeding facility is a TC 3 facility if it is neither a TC 1 facility nor a TC 2 facility.

(B) A breeding facility may increase status from TC 3 to TC 2 if CWD test results of "not detected" have been obtained for:

(i) each breeder deer received by the breeding facility from any CWD-positive site;

(ii) each exposed breeder deer that has been transferred by the breeding facility to another breeding facility or released; and

(iii) 4.5 percent or more of the breeder deer held within the breeding facility during the immediately preceding two reporting years, based on the average population of deer in the facility that were at least 16 months of age on March 31 of each year (including eligible mortalities for those years).

(c) Breeder deer may be temporarily transferred to a veterinarian for medical care.

§65.93. Release Sites - Qualifications and Testing Requirements.

(a) General.

(1) An approved release site consists solely of the specific tract of land and acreage designated as a release site in TWIMS.

(2) All release sites must be surrounded by a fence of at least seven feet in height that is capable of retaining deer at all times. The owner of the release site is responsible for ensuring that the fence and associated infrastructure retain the deer under ordinary and reasonable circumstances.

(3) The owner of a Class II or Class III release site shall maintain a legible daily harvest log at the release site.

(A) The daily harvest log shall be on a form provided or approved by the department and shall be maintained until the report required by subparagraph (E) of this paragraph has been submitted to and acknowledged by the department.

(B) For each deer harvested on the release site and tagged under the provisions of Subchapter A of this chapter (relating to Statewide Hunting Proclamation), the landowner must, on the same day that the deer is harvested, legibly enter the information required by this subparagraph in the daily harvest log.

(C) The daily harvest log shall contain the following information for each deer harvested on the release site:

(i) the name and hunting license or driver's license number of the person who harvested the deer;

(ii) the date the deer was harvested;

(iii) the species (white-tailed or mule deer) and type of deer harvested (buck or antlerless);

(iv) any alphanumeric identifier tattooed on the deer;

(v) any RFID or NUES tag number of any RFID or NUES tag affixed to the deer; and

(vi) any other identifier and identifying number on the deer.

(D) The daily harvest log shall be made available upon request to any department employee acting in the performance of official duties.

(E) By not later than March 15 of each year, the owner of a release site shall submit the contents of the daily harvest log to the department via TWIMS or other format authorized by the department.

(4) Release site status cannot be altered by the sale or subdivision of a property if the purpose of the sale or subdivision is to avoid the requirements of this division.

(5) The owner of a release site agrees, by consenting to the release of breeder deer on the release site, to submit all required CWD test results to the department as soon as possible but not later than May 1, 2016. Failure to comply with this paragraph will result in the release site being declared ineligible to be a destination for future releases for a period of five years.

(6) No person may intentionally cause or allow any live deer to leave or escape from a release site.

(b) Types of Release Sites.

(1) Class I.

(A) A release site is a Class I release site if after July 1, 2015, it:

(i) is not a Tier 1 facility; and

(ii) receives breeder deer only from TC 1 facilities.

(B) There are no testing requirements for a Class I release site.

(2) Class II.

(A) A release site is a Class II release site if, after July 1, 2015, it:

(i) is not a Tier 1 facility;

(ii) receives any breeder deer from TC 2 facility; and

(iii) receives no deer from a TC 3 facility.

(B) The landowner of a Class II release site must obtain valid CWD test results for one of the following values, whichever represents the lowest number of deer tested:

(i) if deer are hunter-harvested, a number of deer equivalent to 50 percent of the number of breeder deer released at the site between the effective date of this division and the end of any open season for deer established for the site under this chapter; or

(ii) 50 percent of all hunter-harvested deer.

(C) If any hunter-harvested deer were breeder deer released between the effective date of this division and the end of any open season for deer established for the site under this chapter, 50 percent of those hunter-harvested deer must be submitted for CWD testing, which may be counted to satisfy the requirements of subparagraph (B) of this paragraph.

(c) Class III.

(1) A release site is a Class III release site if, after July 1, 2015, it receives deer from an originating facility that is a TC 3 facility.

(2) The landowner of a Class III release site must obtain valid CWD test results for one of the following values, whichever represents the greatest number of deer tested:

(A) 100% of all hunter-harvested deer; or

(B) one hunter-harvested deer per breeder deer released between the effective date of this division and the end of any open season for deer established for the site under this chapter.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 18, 2015.

TRD-201503166

Ann Bright

General Counsel

Texas Parks and Wildlife

Effective date: August 18, 2015

Expiration date: December 15, 2015

For further information, please call: (512) 389-4775

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

The Office of the Secretary of State (SOS) proposes to revise Chapter 81, Subchapter F, Primary Elections, and Subchapter G, Joint Primary Elections. In Subchapter F, the SOS proposes amendments to §§81.101, 81.102, 81.108, 81.110, 81.113, 81.116, 81.119, 81.123, and 81.126 - 81.132, the repeal and replacement of §81.112, and new §81.135. In Subchapter G, the SOS proposes amendments to §81.147 and §81.152 and the repeal and replacement of §81.157. The proposal concerns the financing of the 2016 primary elections with state funds, including the determination of necessary and proper expenses relating to the proper conduct of primary elections by party officials and the procedures for requesting reimbursement by the parties for such expenses. The amendments and new sections will improve the clarity of the rules.

In addition, §81.112 is being repealed and replaced to accommodate Senate Bill 1073, 84th Legislature, 2015, relating to the requirements for a candidate's application or nomination for a place on the ballot and related procedures.

Section 81.135 has been added to accommodate Senate Bill 1448, 84th Legislature, 2015, relating to primary procedures for counties without county party leadership.

Section 81.157 is being repealed and replaced to make clear that the county election officer must supervise joint primary elections and, accordingly, the political parties must enter into an election services contract with the county election officer when conducting a joint primary.

The proposed amendments, repeals and new rules are necessary for the proper and efficient conduct of the 2016 primary elections. It is in the public interest to establish adequate procedures to insure the best use of state funding.

Keith Ingram, Director of Elections, has determined that, for the first five-year period the amendments, repeals and new sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rules.

Keith Ingram has also determined that, for each year of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the sections will be the proper conduct of the 2016 primary elections by party officials with the aid of state money appropriated for that purpose. There will be no effect on small or micro-businesses. There will be no anti-

ipated economic cost to the state and county chairs of the Democratic and Republican parties.

Written comments on the proposal may be submitted to the Office of the Secretary of State, Keith Ingram, Director of Elections, P.O. Box 12060, Austin, Texas 78711. Comments may also be sent via email to: elections@sos.texas.gov. For comments submitted electronically, please include "Proposed 2016 Primary Rules" in the subject line. Comments must be received no later than twenty (20) days from the date of publication of the proposal in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed rules. Questions concerning the proposed rules may be directed to Elections Division, Office of the Texas Secretary of State, at (512) 463-5650.

SUBCHAPTER F. PRIMARY ELECTIONS

1 TAC §§81.101, 81.102, 81.108, 81.110, 81.112, 81.113, 81.116, 81.119, 81.123, 81.126 - 81.132, 81.135

The rules are proposed under the Texas Election Code, §31.003 and §173.006, which provide the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Code and other election laws. It also allows the Secretary of State in performing such duties to prepare detailed and comprehensive written directives and instructions based on such laws. These sections additionally authorize the Secretary of State to adopt rules consistent with the Code that reduce the cost of the primary elections or facilitate the holding of the elections within the amount appropriated by the legislature for that purpose. Section 172.117 and §172.122 (as amended by SB 1073) and §172.128 (as amended by SB 1448) of the Texas Election Code also provide this Office with rulemaking authority by their terms.

No other sections are affected by the proposed rules.

§81.101. Primary and Runoff Election Cost Estimate; Receipt of State Funds.

(a) This subchapter applies to the use and management of all primary funds.

(b) Approval by the Secretary of State (SOS) of a primary cost estimate does not relieve the chair, any employee paid from the primary fund, or the county election officer, of their responsibility to comply with administrative rules issued by the SOS, or with any statute governing the use of primary funds.

(c) The SOS shall provide a primary cost estimate to each county chair based on 75% of the final approved costs less non-state appropriated financing sources (e.g., filing fees) for the most recent comparable election for which data is available [election(s)] as determined by the SOS. In order to receive the primary estimate payment,

the chair must submit to the SOS a primary cost estimate via the SOS online primary finance system.

~~[(d)]~~ If data is not available to create a pre-populated cost estimate or if the chair wishes to amend the pre-populated estimate, the chair may enter the appropriate data in the SOS online primary finance system. The primary estimate payment will be based on 75% of the approved estimated costs less the estimated filing fees.]

~~(d)~~ ~~[(e)]~~ If a statewide runoff election [Runoff] is conducted, the SOS shall provide a runoff cost estimate to each county chair based on 75% of the final approved costs [less nonstate appropriated financing sources (e.g., filing fees)] for the most recent comparable election for which data is available [election(s)] as determined by the SOS. In order to receive the runoff estimate payment, the chair must submit to the SOS a runoff cost estimate via the SOS online primary finance system.

~~(e)~~ ~~[(f)]~~ If data is not available to create a pre-populated cost estimate or if the chair wishes to amend the pre-populated estimate, the chair may enter the appropriate data in the SOS online primary finance system [less the estimated filing fees].

~~(f)~~ ~~[(g)]~~ Section 173.031 of the Texas Election Code provides for direct payment from the SOS to a county of a population of 100,000 or more who conducts a primary election under an election services contract. It is the county's prerogative and responsibility to request direct payment from the state. The state is not responsible for revenue due to the county held by the county chair, such as candidate filing fees.

~~(g)~~ ~~[(h)]~~ A payment may not be made directly to the county unless the county chair submits the necessary data to the SOS through a primary or runoff election cost estimate or a final primary election cost report.

~~(h)~~ ~~[(i)]~~ For purposes of Subchapters F and G of this chapter of the Texas Administrative Code, "county election officer" refers to the county clerk, county election administrator, or county tax assessor-collector, depending on the county.

§81.102. Primary Funds Defined.

(a) Pursuant to §173.031 of the Texas Election Code, a county primary fund is created for each county executive committee of a political party holding a primary election. The primary fund consists of:

(1) all filing fees accompanying an application for a place on the ballot filed with the county chair and filing fees for a district office distributed by the state chair to the county chair in a county that is wholly or partly in that district;

(2) state funds paid to the county chair;

(3) contributions made to the county executive committee for the purpose of defraying primary election expenses; and

(4) the income earned by the fund.

(b) Any refund of money expended from a primary fund is considered part of the primary fund.

§81.108. Transfer of Records to New County Chair.

(a) The chair shall transfer in an orderly manner to his or her successor or the appropriate county committee all primary-election records, including financial records listed under §81.107 of this chapter (relating to Primary-Fund Records), required by law to be maintained or within the 30th day after the date the term of office of a new county chair begins, whichever comes first (in accordance with Texas Election Code §171.028).

(b) Texas Election Code §171.028 provides a criminal penalty for failure to transfer records to the new county chair.

(c) If a vacancy occurs in the office of county chair, the county executive committee shall appoint an individual to serve as the custodian of primary-election records until a new county chair is appointed or elected.

(d) If the final cost report has not been finalized at the time the records are transferred or a vacancy occurs, it is the responsibility of the incoming chair or the appointed custodian and the outgoing chair to determine how best to complete the primary finance process, including the disbursement of the county chair compensation.

(e) Payments issued by the Comptroller of Public Accounts will be payable to the county party chair, not the individual's name, as described in §81.103(b) of this chapter (relating to Bank Account for Primary-Fund Deposits and Expenditures). Therefore, it is the responsibility of the individual with access to the primary fund established pursuant to §81.102 of this chapter (relating to Primary Funds Defined) and §81.103 of this chapter to ensure final payment(s) from the primary fund are issued properly to close-out the financing of the [2014] Primary.

§81.110. Fidelity Bond Purchase.

(a) An individual with responsibilities that include the receipt or expenditure of primary funds may purchase a fidelity bond with money from the primary fund.

(b) An individual purchasing a bond under this section shall base the amount of the bond on the anticipated total amount of primary funds that the individual will collect and disburse from November 1 immediately preceding [before] the primary elections to the last day of the month in which the final primary election occurs. The amount used for the purpose of determining the amount of the bond shall not exceed \$50,000, unless a higher amount is approved by the SOS.

§81.112. List of Candidates and Filing Fees.

(a) Submission of information.

(1) Submission of filed application. Pursuant to §172.029 of the Texas Election Code (the "Code"), for each general primary election, all state and county chairs shall electronically submit information about each candidate who files with the chair an application for a place on the ballot, including an application for the office of a political party.

(2) Method of submission. The chair shall submit candidate information through an electronic submission service prescribed by the SOS. The SOS shall maintain the submitted information in an online database, in accordance with §172.029(b) of the Code. The SOS is not responsible for the accuracy of the information submitted by the chair; the SOS is responsible only for providing the electronic submission service, displaying the information publicly on its website, and maintaining the online database.

(3) Information required for submission. The electronic submission service will notate the types of information that must be inputted for a complete submission of candidate information. However, the chair must submit any and all information on the candidate's application for which there is an applicable entry field on the electronic submission service.

(4) Submission deadline. A chair shall submit a candidate's information and a notation of each candidate's status not later than 24 hours after the chair completes the review of the candidate's application, in accordance with §172.029 of the Code. By not later than the 8th day after the regular filing deadline, the chair shall submit a candidate's information and a notation concerning the candidate's status for all candidates who filed, in accordance with §172.029 of the Code. The county chair will not be able to make modifications to the submitted information or notations on or after the 9th day after the regular filing

deadline. If modifications to a candidate's information or notation are required on or after the 9th day after the regular filing deadline, such changes must be made by the state chair.

(5) Submission of nominee by executive committee. If a candidate is nominated by the appropriate executive committee for a place on the general election ballot in accordance with §145.036 or §202.006 of the Code, the appropriate chair shall submit the candidate's information and notation through the electronic submission service prescribed by the SOS, in accordance with §172.029 of the Code. The submission of the candidate's information and notation shall be completed not later than 5 p.m. on the 71st day before general election day to allow for the preparation of the general election ballot by the authority printing the ballots.

(6) Time for notations. The county chair will be able to update notations to describe the status of each candidate beginning the first day after the day of the primary election. If modification to the notation is needed, the appropriate chair will update the candidate information to reflect the candidate's status from the list of notations available. The notations must be complete and accurate not later than 5 p.m. on the 71st day before general election day to allow for the preparation of the general election ballot by the authority printing the ballots.

(b) Notification of filing.

(1) County chair: delivery of candidate list. Upon submission of information for all candidates who filed and whose applications have been reviewed and accepted for a place on the ballot, the county chair shall notify the applicable county clerk that candidate information has been submitted for all candidates, in accordance with §172.029 of the Code. Notification may be sent by email, regular mail, or personal delivery, so long as it is delivered by no later than the 9th day after the regular filing deadline.

(2) State chair: notification of submission. Upon submission of information for all candidates who filed and whose applications have been reviewed and accepted for a place on the ballot, the state chair shall notify the applicable county chairs that candidate information has been submitted for all candidates, in accordance with §172.028 and §172.029 of the Code. Notification may be sent by email, regular mail, or personal delivery, so long as it is delivered by no later than the ninth day after the regular filing deadline.

(3) Notification. Pursuant to §172.056(b) of the Code, the chair shall notify the county chairs, the county clerk, or the state chair, as applicable, that a candidate filed an application that complied with the applicable requirements during the extended filing period. Notification shall be made by email, regular mail, or personal delivery.

(4) Court order. If a court orders a candidate's name to be placed on the ballot or removed from the ballot, the chair shall immediately notify the SOS.

(c) Public display and failure to submit.

(1) Public display of information. The SOS will publicly display on its website a limited portion of the information submitted by the chair. For candidates for public office, the SOS will publicly display, via its website, the candidate's name, public mailing address and any electronic mail address provided by the candidate pursuant to §141.031(a)(4)(M) of the Texas Election Code, and office sought, along with the office's corresponding precinct, district or place. For candidates for the office of a political party, the website will publicly display the name of the chair and, if applicable, the corresponding numeric identifier.

(2) Failure to submit information. If a chair fails to electronically submit candidate information for all candidates who filed and

whose applications have been reviewed and accepted for a place on the ballot, then the chair is directly responsible for delivering a certified list of all candidates to:

(A) the applicable county chairs, if the submitting chair is a state chair; or

(B) the applicable county clerk and state chair, if the submitting chair is a county chair.

§81.113. Misuse of State Funds.

The SOS shall refer any misuse or misappropriation of primary funds to the appropriate prosecuting authority for the enforcement of all civil and/or criminal penalties. Prosecuting authority includes but is not limited to Office of the Attorney General. Misuse of funds includes not complying with reporting requirements prescribed by the Code or this title.

§81.116. Estimating Voter Turnout.

(a) The county chair shall use the formula set out in the following figure, with necessary modifications as determined by the chair, to determine the estimated voter turnout for each precinct for the [2014] primary elections. This formula is a guideline and must be adjusted if the local political situation indicates a higher voter turnout than that derived by the formula.

Figure: 1 TAC §81.116(a)

(b) After estimating the voter turnout for each precinct, the county chair shall use the guidelines set forth in §§81.117, 81.124, and 81.125 of this chapter (relating to the Number of Election Workers per Polling Place, Number of Ballots per Voting Precinct, and Number of Direct Record Electronic (DRE) Units or Precinct Ballot Counters per Voting Precinct) to determine the necessary personnel, supplies, and equipment for each precinct (i.e., ballots, election judges and clerks, voting devices, or machines).

(c) After estimating the need for personnel, supplies, and equipment for each precinct, the county chair shall combine all precinct data to determine the total countywide estimate.

(d) The county chair may use the estimate calculated under subsection (c) of this section to determine the estimated cost of the election.

§81.119. County Chair's Compensation.

(a) Pursuant to §173.004 of the Texas Election Code, a county chair may receive compensation for administering primary elections. [~~Note: In calculating the county chair's compensation, legal fees and contracted services will not be included in the formula for determining the county chair's compensation.~~]

(b) The SOS shall not authorize payment under this section until the county party's final cost report has been received, including the necessary supporting documentation required in §81.107 of this chapter (relating to Primary-Fund Records), and approved by the SOS. The SOS shall notify the county chair of the approval via email. The chair may view the approved costs by line item in the online primary finance system.

(c) After all other expenses have been paid and the final cost report has been approved by SOS, the county chair shall be paid with a check drawn on the county's primary-fund account.

(d) The SOS may deny compensation to county chairs who file delinquent final-cost reports.

(e) Legal fees and county election service contract costs will not be included in the formula for determining the county chair's compensation. If there are services contracted with the county in which the

county works with a third party but the third party is paid directly by the county chair, such as voting system vendors and election workers, the election service contract must stipulate whether the cost is applied to the county's election service contract 10 percent general supervision fee pursuant to §81.131 of this chapter (relating to Contracting with the County Election Officer) or the county chair compensation calculation.

§81.123. *Administrative Personnel and Overall Administrative Costs Limited.*

(a) "Administrative Personnel" means a non-election-day worker.

(b) The employment of administrative personnel is not required for the conduct of the primary elections.

(c) Pursuant to §81.114 of this chapter (relating to Conflicts of Interest), no member of the county chair's family may be paid an administrative salary from primary funds.

(d) If administrative personnel are utilized, salaries or wages for such personnel are payable from the primary fund for a period beginning no earlier than November 1~~;~~ 2013~~;~~ immediately preceding the primary election and ending no later than the last day of the month in which the primary election or runoff primary election, if applicable, is held.

(e) If the county chair contracts with third parties or the county election officer for election services, the overall administrative personnel costs to be submitted to the SOS for reimbursement cannot include administrative expenses provided by third parties or a county election officer. (Administrative personnel costs include, but are not limited to, polling location services, ballot ordering, and secretarial services.)

(f) The SOS may disallow full payment for administrative personnel if it is determined that the contracting county election officer substantially performed the conduct of the election.

(g) Other administrative costs chargeable to the primary fund include ~~are items such as administrative personnel,~~ office rental, telephone and utilities, office furniture and equipment rental, computer purchase, office supplies, bank fees, election law books, and other miscellaneous expenses.

~~[(h) The 83rd Legislature did not increase funding for primary elections; county chairs are encouraged to budget administrative costs accordingly.]~~

~~[(h) [(+)] In addition to the limitations set forth in the Texas statutes and Subchapters F and G of this chapter of the Texas Administrative Code, including but not limited to §§81.127, 81.128, and 81.129 of this chapter (relating to Office Equipment and Supplies, Telephone and Postage Charges, and Office Rental), the funding caps illustrated in Figure: 1 TAC §81.123(h)[(+)] apply to the total administrative expenses a county chair may charge to the primary fund.~~

~~Figure: 1 TAC §81.123(h)~~

~~[Figure: 1 TAC §81.123(+)]~~

~~[(+)] County chairs may request through the online primary finance system compensation for eligible administrative costs beyond the limitations set forth in Figure: 1 TAC §81.123(h)[(+)]. After the SOS concludes it has received a sufficient number of final cost reports and sufficient funding is available, the SOS will distribute amendment payments that are deemed reasonable.~~

§81.126. *Training Reimbursement to Attend County Chairs Election Law Seminar.*

(a) Except as provided by this section, the SOS shall reimburse from the state primary fund, the actual travel expenses for the county chair or the county chair's designee who will be responsible for the

primary finance bookkeeping to attend the SOS Election Law Seminar for County Chairs. (The SOS shall provide travel reimbursement forms at the seminar.)

(b) The SOS shall reimburse the county chair or the county chair's designee for:

(1) mileage (if driving personal vehicle);

(2) airfare (coach only);

(3) airport transfers;

(4) airport parking;

(5) lodging; and

(6) any other reasonable expenses related to an individual's attendance at the Election Law Seminar for County Chairs.

(c) The SOS shall use an electronic mapping tool available on the internet (including, but not limited to, Mapquest, Google Maps, or Bing Maps) to determine distances traveled to attend the Election Law Seminar for County Chairs. The SOS shall reimburse mileage claims from the county seat to and from Austin using the mileage rate approved by the State Comptroller at the time of the seminar.

(d) The SOS shall reimburse actual lodging expenses in an amount not to exceed the rates approved by the state, plus applicable taxes.

(e) As provided by the Texas General Appropriations Act, the SOS shall not make reimbursements for gratuities or tips.

(f) The county chair or the chair's designee must submit actual receipts to the SOS in order to be reimbursed for airfare, lodging, parking, or airport transfers.

(g) The county chair shall submit request for reimbursement no later than 60 days after the seminar. If a request for reimbursement is submitted after this date, the SOS may deny the request.

(h) Overnight lodging for two nights is approved for counties that are more than 200 miles distance from Austin; otherwise, prior approval for more than one night of lodging must be obtained from SOS.

§81.127. *Office Equipment and Supplies.*

(a) Rental of office equipment is not required in order to conduct primary elections.

(b) The county chair may lease office equipment necessary for the administration of the primary elections for a period beginning November 1~~;~~ 2013~~;~~ immediately preceding the primary election and ending not later than the last day of the month in which the primary election or runoff election primary, if applicable, is held.

(c) The county party may not rent or lease equipment in which the party, the county chair, or a member of the county chair's family has a financial interest. (See definition of "family" at §81.114(b) of this chapter (relating to Conflicts of Interest).)

(d) The county chair or party shall rent equipment from an entity that has been in business for at least 18 months and has at least three other bona fide clients and is on file with the corporation department of the SOS or locally.

(e) The purchase of office supplies must be reasonable and/or necessary for the administration of the primary election to be payable from the primary fund. (This includes, but is not limited to, the purchase of two copies of the Texas Election Code.)

(f) The county chair or party may be reimbursed for the cost of incidental supplies used in connection with the primary election.

(Examples of reasonable incidental supplies include paper, toner, and staples.)

(g) The county chair may not use primary funds to purchase any single office-supply item or equipment valued at over \$1,500. These items become a part of the Party Primary Office and are to be transferred to the next county chair.

(h) The county chair may not pay notary public expenses from the primary fund.

(i) Computer serial numbers must be reported to SOS to ensure the asset can be tracked from one election to the next.

(j) Any computer purchased with primary funds is to be used for primary related functions. It is not considered the property of the party chair, rather the property of the county party, and must be transferred to the incoming party chair when a new chair takes office.

(k) A computer purchased with primary funds shall be used for two primary election cycles before a new computer may be purchased using primary funds.

§81.128. Telephone and Postage Charges.

~~[(a)]~~ The SOS shall reimburse necessary telephone and postage costs incurred with respect to the administration of the primary elections beginning no earlier than November 1 ~~[; 2013]~~ immediately preceding the primary election and ending no later than the last day of the month in which the primary election or runoff primary election, if applicable, is held.

~~[(b) In counties with fewer than 150 primary election day polling places, the county party may be reimbursed for the lease of no more than two telephone lines.]~~

~~[(c) In counties with 150 or more primary election day polling places, the county party may be reimbursed for the lease of no more than four telephone lines.]~~

§81.129. Office Rental.

(a) The rental of office space is not required for the conduct of the primary elections.

(b) The SOS shall reimburse necessary office space rental expenses incurred with respect to the administration of the primary elections for a period beginning no earlier than November ~~[; 2013]~~ immediately preceding the primary election and ending not later than the last day of the month in which the primary election or runoff primary election, if applicable, is held.

(c) If the rental of office space is necessary, the county party shall rent office space in a regularly rented commercial building. Office rent shall not exceed the fair market rate for comparable office space in the same area.

(d) Unless such services are required in accordance with the lease agreement, no payment may be made with primary funds for janitorial services, parking, or signage.

(e) The county party may not rent or lease office space in which the party, the county chair, the county chair's spouse, or the county chair's family has a financial interest. (See definition of "family" at §81.114(b) of this chapter (relating to Conflicts of Interest).)

(f) If the party leases space for the purpose of the primary only, the county chair shall transmit a copy of the three competitive bids obtained as well as the lease agreement to the SOS, along with a copy of the final cost report. (Note: If the party maintains a lease, unrelated to the conduct of the primary, the cost of that lease will not be reimbursed in excess of 30% of the monthly rental cost by the state as a primary expense.)

§81.130. Payment for Use of County-Owned Equipment.

(a) §123.033 of the Texas Election Code provides for the rental rate that a county may charge for the use of its equipment. (The rental rates are \$5 for each unit of tabulating equipment and \$5 for each ~~[complete]~~ unit of electronic voting system equipment installed at a polling location.) Removable components, such as a flash drive or accessibility component, may not be charged separately. ~~[which makes up a voting device.]~~

(b) In addition to subsection (a) of this section, the county primary fund may be used to pay the actual expenses incurred by the county in transporting, preparing, programming, and testing the necessary equipment, as well as for staffing the central counting station.

(c) The county chair shall submit all calculations for amounts charged for the use of county-owned and non-county-owned equipment to the SOS for review with the final cost report.

(d) The county chair shall not use primary funds to pay expenses related to the use of non-county-owned equipment, including, but not limited to, ballot boxes and voting booths pursuant to §51.035 of the Texas Election Code, without approval from the SOS.

(e) Pursuant to §51.035 of the Texas Election Code, counties may not charge the county parties for use of county-owned voting booths or ballot boxes; however, the primary fund may pay the actual expenses incurred by the county in transporting the equipment to and from the polling places if the county provides that service.

§81.131. Contracting with the County Election Officer.

(a) The SOS has prepared a Primary Election Services Contract and a Joint Primary Election Service Contract (the "Model Contract"). Copies of the appropriate Model Contract may be obtained from the SOS.

(b) The county chair may use the Model Contract when executing an agreement for election services between the county executive committee and the county elections officer. (Contractible election services are listed in Subchapter B of Chapter 31 of the Texas Election Code.)

(c) The Model Contract may be revised as necessary to accommodate the specific agreement between the county chair and county election officer; however, activities not required by law are not payable with primary funds. Accordingly, those activities should be identified in the contract, including a stipulation as to whether the county chair or the county election officer will be responsible for the cost.

(d) Before the county chair may make final payment, the county election officer must submit to the county chair an accounting of the actual costs incurred in the performance of the election services contract in a form prescribed by the SOS, which. ~~This must also be reported in the online primary finance system prescribed by the SOS. The county chair may accept the data entered in the online primary finance system as an accounting of the actual costs incurred in the performance of the election services contract. Otherwise, a copy]~~ must be included with the final cost report.

(e) The SOS may only pay actual costs incurred by the county and payable under provisions of the Texas Election Code, an election-services contract, or these administrative rules. Costs prohibited by this chapter that appear in the election service contract are not reimbursable with primary funds and must be articulated as such in the contract.

(f) Salaries of personnel regularly employed by the county may not be paid from or reimbursed to the county from the primary fund even if the employee used their vacation time to perform the duties.

(g) A county election officer may not contract for the performance of any duty or service that he or she is statutorily obligated to perform.

(h) Pursuant to §31.098 of the Texas Election Code, if authorized in the contract, county election officers who contract or conduct joint primaries must pay all bills for items they order on behalf of the parties, and seek reimbursements from the parties. Conversely, if a contract provides that the contracting authority (the county political party) is to pay the claims of third persons, then the county political party is responsible for payment directly to the claimant.

(i) §31.100 of the Texas Election Code authorizes the election officer to assess a "general supervision fee" of up to 10 percent against the amount of the contract. If there are services contracted with the county in which the county works with a third party but the third party is paid directly by the county chair, such as voting system vendors and election workers, the election service contract must stipulate whether the cost is applied to the county's election service contract 10 percent general supervision fee or the county chair compensation calculation (see §81.119 of this chapter (relating to County Chair's Compensation)).

(j) [(†)] County chairs are authorized to make deposits to the county election officer for contract election services prior to services being delivered consistent with §31.100 of the Texas Election Code.

§81.132. Cost of Early Voting to Be Paid by the County.

(a) Pursuant to §173.003 of the Texas Election Code, the only expense to be paid from primary funds for early voting is ballot costs and the early voting ballot board.

(b) The county shall pay for voting-by-mail kits including, but not limited to, postage, early-voting workers, and all other costs incurred that are related to early voting.

(c) The county chair shall not include non-eligible expenses related to early voting in a primary-election-services joint resolution, county election services contract or a primary cost report.

§81.135. Primary Procedure for Counties without County Party Leadership.

(a) The county election officer of a county where the county chair is vacant shall contract with the state chair of a political party under the following circumstances:

(1) There is an insufficient number of members serving on the county executive committee to fill a vacancy on the committee;

(2) The party is unable to establish a temporary executive committee under §171.027 of the Texas Election Code; and

(3) The election is required for the nomination of a political party to a statewide office or a presidential primary election.

(b) The county election officer and the state chair shall enter into an election services contract consistent with §81.131 of this chapter (relating to Contracting with the County Election Officer), which, in accordance with §172.128 of the Texas Election Code, also provides that the county shall be eligible to be reimbursed for primary election expenses in the same manner a county chair would be reimbursed under Subchapter D, Chapter 173.

(c) The state party shall report costs incurred consistent with this section to the Secretary of State and receive funding consistent with this chapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Lindsey Wolf

General Counsel

Office of the Secretary of State

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1 TAC §81.112

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

The repeal is proposed under the Texas Election Code, §31.003 and §173.006, which provide the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Code and other election laws. It also allows the Secretary of State in performing such duties to prepare detailed and comprehensive written directives and instructions based on such laws. These sections additionally authorize the Secretary of State to adopt rules consistent with the Code that reduce the cost of the primary elections or facilitate the holding of the elections within the amount appropriated by the legislature for that purpose. Section 172.117 and §172.122 (as amended by SB 1073) and §172.128 (as amended by SB 1448) of the Texas Election Code also provide this Office with rulemaking authority by their terms.

No other sections are affected by the proposed repeal.

§81.112. List of Candidates and Filing Fees.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER G. JOINT PRIMARY ELECTIONS

1 TAC §§81.147, 81.152, 81.157

The rules are proposed under the Texas Election Code, §31.003 and §173.006, which provide the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Code and other election laws. It also allows the Secretary of State in performing such duties to prepare detailed and comprehensive written directives and instructions based on such laws. These sections additionally authorize the Secretary of State to adopt rules consistent with the Code that reduce the cost of the primary elections or facilitate the holding of the elections within the amount appropriated by the legislature for that purpose. Section 172.117 and §172.122 (as amended by SB 1073) and §172.128

(as amended by SB 1448) of the Texas Election Code also provide this Office with rulemaking authority by their terms.

No other sections are affected by the proposed rules.

§81.147. County Election Officer to Conduct Joint Primary.

(a) Pursuant to §172.126(a) of the Texas Election Code, the county election officer shall supervise the overall conduct of joint primary elections.

(b) The county election officer is responsible for:

- (1) appointing election judges and clerks;
- (2) determining the ballot format and type of voting system for each precinct; and
- (3) procuring election equipment and supplies.

(c) The decision to conduct a joint general primary election or runoff primary election, as applicable, must be made by majority vote of the full membership of the commissioners court and with the unanimous approval of the county election officer and the county chair of each political party required to nominate candidates by primary election.

§81.152. Estimating Voter Turnout for Joint Primaries.

(a) Each county chair shall estimate voter turnout for each precinct using the formula set out in the following figure. Figure: 1 TAC §81.152(a)

(b) The county election officer shall combine the turnout estimates provided by each party chair for each joint-primary precinct.

(c) The county election officer shall enter this information in Section B of the Joint Primary Resolution.

§81.157. Joint-Primary Contract with the County Election Officer.

(a) If a joint primary is approved, the county election officer shall supervise the primary and runoff elections, as applicable, in accordance with §172.126 of the Texas Election Code.

(b) The county chair of each political party and election officer shall enter into an election services contract.

(c) The rules set forth in §81.131 of this chapter (relating to Contracting with the County Election Officer) apply to the contract.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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1 TAC §81.157

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

The repeal is proposed under the Texas Election Code, §31.003 and §173.006, which provide the Office of the Secretary of State

with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Code and other election laws. It also allows the Secretary of State in performing such duties to prepare detailed and comprehensive written directives and instructions based on such laws. These sections additionally authorize the Secretary of State to adopt rules consistent with the Code that reduce the cost of the primary elections or facilitate the holding of the elections within the amount appropriated by the legislature for that purpose. Section 172.117 and §172.122 (as amended by SB 1073) and §172.128 (as amended by SB 1448) of the Texas Election Code also provide this Office with rulemaking authority by their terms.

No other sections are affected by the proposed repeal.

§81.157. Joint-Primary Contract with the County Election Officer.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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General Counsel

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PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 201. GENERAL ADMINISTRATION

1 TAC §§201.3, 201.4, 201.6, 201.9

The Texas Department of Information Resources (department) proposes amendments to 1 TAC Chapter 201, §§201.3, 201.4, and 201.6 and proposes a new §201.9 to ensure the rules accurately reflect the department's policies and procedures. The department published a formal notice of rule review in the March 13, 2015, issue of the *Texas Register* (40 TexReg 1527). Review of the sections implements Texas Government Code, §2001.039.

In §201.3, the department proposes amendments to add subsection (a) that describes the purpose and intent of the rule. All sequential letters have been changed for accuracy. In §201.3(b), the department proposes amendments to accurately describe current process and procedures.

In §201.4, the department proposes amendments to clarify the policy and procedures for accepting gifts. In §201.4(c) and §201.4(c)(1), the department proposes amendments to add language clarifying the circumstances in which department may accept gifts to accurately reflect Texas Government Code §2255.01 and §2054.052(g).

In §201.6, the department proposes amendments to add new language to implement Section 18 of Senate Bill 20 (84R) effective September 1, 2015, regarding contract monitoring.

The department proposes new §201.9 to comply with §2001.021, Texas Government Code, as amended by House Bill 763 (84R).

The changes to the chapter apply to DIR and will have no effect on state agencies and institutions of higher education. The

assessment of the impact of the proposed changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education (ITCHE) in compliance with §2054.121(c), Texas Government Code.

Martin Zelinsky, General Counsel, has determined that during the first five-year period following the revisions to 1 TAC Chapter 201 there will be no fiscal impact on state agencies, institutions of higher education and local governments.

Mr. Zelinsky has further determined that for each year of the first five years following the adoption of the proposed amendments and new rule to 1 TAC Chapter 201 there are no anticipated additional economic costs to persons or small businesses required to comply with the rules.

Written comments on the proposed amendments and new rule may be submitted to Martin Zelinsky, General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701 or to martin.zelinsky@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments to existing rule and new rule are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; §2255.001, Texas Government Code, which authorizes state agencies to develop rules; and §2001.021(b), Texas Government Code, which authorizes state agencies to, by rule, prescribe the form of a petition under the section.

No other code, article or statute is affected by this proposal.

§201.3. *Assignment of Department Vehicles.*

(a) Purpose and Intent. The purpose of this rule is to implement the provisions of Texas Government Code §2171.1045.

(b) ~~[(a)] Department vehicles are available for conducting official department business. Vehicles may be assigned to specific field employees or available for checkout for use by employees conducting official department business~~, with the exception of vehicles assigned to field employees, shall be assigned to the agency motor pool and may be available for checkout].

(c) ~~[(b)]~~ The department may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if the department determines that the assignment is critical to the needs and mission of the department. The determination shall be documented and maintained in writing.

§201.4. *Board Policies.*

(a) The executive director is hereby delegated authority by the board to grant a requesting state agency a compliance waiver from administrative rule, statewide standards, or other board policies. A state agency may request a compliance waiver from administrative rule, statewide standards or other board policy. The agency must clearly demonstrate to the department through written justification any performance or cost advantages to be gained and that the overall economic interests of the state are best served by granting the compliance waiver. The executive director of the department will notify the board when requests for waivers are received.

(b) The executive director is hereby delegated authority by the board to establish a sick leave pool program for employees of the department. The program must be consistent with the requirements of state law regarding state employee sick leave pools. The executive director is hereby appointed as the sick leave pool administrator. The executive director may designate another employee of the department to serve as the pool administrator under the supervision of the executive

director. The pool administrator shall prescribe procedures relating to the operation of the sick leave pool program.

(c) In compliance with Chapter 2255, Texas Government Code, this subsection establishes the criteria, procedures and standards of conduct governing the relationship between the department and its officers and employees and private donors. This subsection authorizes the department to accept gifts and donations the department determines it is in the public interest to accept as a result of an emergency, including both natural and manmade disasters. The department is authorized to accept gifts and donations the department determines it is in the public interest to accept as a result of technology benefit including education, assessment or innovation.

(1) A private donor may make donations, including gifts, to the department to be spent or used for public purposes during times of emergency, including times of manmade and natural disasters or for any public purpose related to the duties of the department. Use by the department of the donation must be consistent with the mission and duties of the department. If the donor specifies the purpose for which the donation may be spent, the department must expend the donation only for that purpose.

(2) Monetary donations [Donations] must be spent in accordance with the State Appropriations Act and shall be deposited in the state treasury unless statutorily exempted.

(3) The executive director is hereby delegated authority to coordinate all donations and may accept donations that do not exceed \$250,000 in value on behalf of the department. Each donation accepted by the executive director must be acknowledged by the board at the board meeting following [within thirty days of] acceptance of the donation by the department. Donations that exceed \$250,000 in value must be approved [accepted] by the board prior to acceptance.

(4) Acceptance of the donation by either the board or the executive director of the department must be recorded in the board minutes, together with the name of the donor, description of the donation and a statement of the purpose of the donation.

(5) Donations may be accepted only if the executive director or board, as applicable, determines the donation will further the department's mission or duties, provide significant public benefit and not influence or reasonably appear to influence, the department in the performance of its duties.

(6) Execution of a donation agreement is required if the value of the donation exceeds \$10,000 or if a written agreement is necessary, in the opinion of the department, to:

- (A) indemnify the department as to ownership;
- (B) prevent potential claims that could result from use of the donation, including access to confidential information;
- (C) document donation terms or conditions; ~~[or]~~
- (D) describe how the donation will further the department's mission or duties, provides a significant public benefit and is not made in an effort to influence action on the part of the department; or[-]
- (E) delete any information on a device donated to the department.

(7) Each donation agreement must include:

- (A) a description of the donation, including a determination of its value;
- (B) donor attestation of ownership rights in the donation;

(C) any restrictions or terms of use of the donation imposed by the donor;

(D) contact information for the donor;

(E) a statement that the department takes no position regarding and is not responsible for any tax-related representations by the donor and all value determinations are the responsibility of the donor and do not constitute affirmation of that value by the department; and

(F) the signature of the executive director and the donor or an authorized representative of the donor if it is an entity rather than an individual.

(d) The board shall set a strategic direction for the department by:

(1) establishing a subcommittee for each major program area to monitor activities, major outsourced contracts, and new initiatives for and service offerings by the department;

(2) evaluating and approving new initiatives for, or categories of, services offered by the department under the department's various programs.

(e) The board shall regularly evaluate the extent to which the department fulfills the department's information resources technology mission by providing cost-effective services and meeting customer needs.

(f) The board shall regularly evaluate department operations, including an evaluation of analytical data and information regarding trends in department revenue and expenses, as well as performance information.

(g) The board shall maintain an audit subcommittee of the board. The subcommittee shall oversee the department's internal auditor and any other audit issues that the board considers appropriate. The subcommittee shall evaluate whether the internal auditor has sufficient resources to perform the auditor's duties and ensure that sufficient resources are available.

(h) A department employee may not:

(1) have an interest in, or in any manner be connected with, a contract or bid for a purchase of goods or services by the department; or

(2) in any manner, including by rebate or gift, directly or indirectly accept or receive from a person to whom a contract may be awarded anything of value or a promise, obligation, or contract for future reward or compensation.

(3) A department employee who violates paragraph (1) or (2) of this subsection is subject to disciplinary action, including dismissal.

(4) The department shall train staff in the requirements of this subsection and Government Code, Chapter 572, and incorporate the requirements into the contract management guide and the department's internal policies, including employee manuals.

§201.6. Contract Approval Authority and Responsibilities.

(a) Purpose. The purpose of this rule is to establish the approval authority and responsibilities for executing contracts required by the department.

(b) Applicability. This rule applies to all contracts entered into by the department.

(c) Definitions. As used in this section, the following terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Board--The governing board of the department.

(2) Contract--A written agreement between the department and a contractor for goods or services. As used in this section, "contract" includes the following: letters of agreement; interagency/interlocal agreements with other government entities; and other documents in which state funds or services allocated to the department are exchanged for the delivery of other goods or services.

(3) Major Outsourced Contract--A contract the department executes with entities other than this state or a political subdivision of this state that:

(A) is authorized under Government Code, Chapter 2054, Subchapter I or Subchapter L, or Chapter 2170; or

(B) exceeds the monetary threshold in subsection (d)(1)(A) of this section, other than those contracts described in subparagraph (A) of this paragraph.

(4) Value--The department adopts by reference the determination of contract value set forth in the State of Texas Contract Management Guide. The determination of contract value shall include, in addition to compensation to a contractor from funds allocated to the department, an amount deposited into the State general revenue fund or other state fund in a revenue sharing contract arrangement with a contractor.

(d) Approval Authority.

(1) Board Approval. The executive director or his/her designee shall present certain contracts to the board for approval. After a contractor is selected, a majority of the board shall provide final approval of the contract with the selected contractor. The board shall consider for final approval:

(A) any contract or amendment with a value expected to exceed \$1,000,000;

(B) any major outsourced contract;

(C) any amendment to a major outsourced contract if the amendment has significant statewide impact;

(D) any other contract deemed appropriate for board approval as determined by the executive director.

(2) Agency Approval.

(A) The board delegates authority to the executive director or his/her designee to approve all contracts not listed in paragraph (1) of this subsection.

(B) The board delegates authority to the executive director to approve a purchase request or contract listed in paragraph (1) of this subsection for an emergency as such is defined in 34 TAC §20.32, or to avoid undue material additional cost to the state. The executive director shall report any purchase requests or contracts executed by the executive director pursuant to the authority in this subsection to the board chair prior to execution of any such purchase requests or contracts subject to this rule.

(e) Authority to Execute Contracts. The board delegates authority to the executive director to execute all contracts for the department. This authority may be delegated by the executive director to the deputy executive director or other designee.

(f) Contract Planning.

(1) The department will present to the Board for approval a contract plan for the next fiscal year that outlines the agency's anticipated contracting actions that exceed \$100,000.

(2) As deemed necessary by the executive director or his/her designee, updates to the contract plan will be provided to the board for approval periodically throughout the fiscal year.

(g) Contract Monitoring.

(1) Each contract identified as a major outsourced contract under subparagraph (c)(3)(A) above shall be subject to enhanced contract and performance monitoring.

(2) Information about contracts subject to such monitoring shall be regularly presented to the board and the executive director of the department.

(3) The department will immediately notify the board of any serious issue or risk that is identified with a contract subject to such monitoring.

§201.9. Petition for the Adoption of a Rule.

(a) Purpose. This section provides procedures for any interested person (petitioner) to request the department to adopt a rule.

(b) Content of Petition.

(1) The petition must be in writing. No form is required but all information must be provided, or a reason why required information cannot be provided.

(2) The petition must contain the following:

(A) petitioner's name, address, organization or affiliation, if any, and the name of the person or entity on whose behalf the petition is filed, if different from the person submitting the petition;

(B) a plain and brief statement about why a rule or change in an existing rule is needed, required, or desirable, including the public good to be served and any effect on those who would be required to comply with the rule;

(C) an estimate of the fiscal impact on state and local government as a result of enforcing or administering the proposed rule, an estimate of the economic impact on persons required to comply with the proposed rule, whether there may be an effect on local employment, and the facts, assumptions and methodology used to prepare estimates and impacts required by this subparagraph;

(D) a statement on the department's authority to adopt the proposed rule;

(E) the proposed text of a new rule, or proposed changes to an existing rule; and

(F) a list of individuals, organizations or affiliations that may be interested or affected by the proposed rule, if known.

(c) Submission. A petition is submitted on the date it is received by the department. The petition must be mailed to the department, or hand delivered to the department in Austin, Texas.

(d) Review. The department will review the petition for compliance with the requirements of this section.

(e) Decision to Deny or Accept. The department will deny a petition for rulemaking, or accept, in whole or in part, a petition for rulemaking within 60 days from the date the petition is submitted.

(1) The department will notify the petitioner in writing if the petition is denied and state the reason or reasons for the denial.

(2) The department will refer an accepted petition to agency staff to initiate the rulemaking process under Chapter 2001, Subchapter B, of the Government Code. Agency staff may redraft the proposed text to conform to style, format and policy decisions of the agency.

(f) Repetitive petitions. The department may refuse to bring a petition for rulemaking to the commission if, within the preceding year, the commission has considered a previously submitted petition for the same rule.

(g) Board Petition Report. Prior the end of each fiscal year, the department will present to the board a report of all petitions received during the fiscal year. The report shall contain a summary of the petitions and the status or final determination of the petition review process.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Martin H. Zelinsky

General Counsel

Department of Information Resources

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For further information, please call: (512) 463-6124



CHAPTER 211. INFORMATION RESOURCES MANAGERS

The Texas Department of Information Resources (department) proposes amendments to 1 TAC Chapter 211, §§211.1, 211.11, 211.20, and 211.21, concerning Information Resources Managers. These proposed amendments are necessary to clarify and update the processes and policies of current practices. The department published a formal notice of rule review in the November 7, 2014, issue of the *Texas Register* (39 TexReg 8746). Review of the sections implements Government Code, §2001.039.

In §211.1, DIR proposes an amendment to add a definition for information resources managers. This definition came from DIR policy documents that are currently in existence.

In §211.11, DIR proposes an amendment to delete language requiring information resources managers to hold a four-year college or university degree. DIR staff worked with state agency subject matter experts and determined this additional language is unnecessary and burdensome. DIR made this rule applicable to information resources managers and joint information resources managers. It previously excluded joint information resources managers. DIR revised language to make it succinct and clear. Additionally, DIR proposes amendments to clarify language.

In §211.20(b), DIR proposes an amendment to delete the sentence that allows an institution to designate separate information resources managers for academic and administrative information resources. DIR worked with subject matter experts from state agencies and institutes of higher education who recommended removing this language since the practice is obsolete, as DIR has not permitted separate information resources managers in over ten years.

In §211.20(c), DIR proposes amendments to remove this subsection in its entirety. DIR worked with subject matter experts from state agencies and institutes of higher education who recommended removing this language since the practice is obsolete. DIR then changed the lettering of the subsequent subsections to be consistent with this change.

In §211.21(1), DIR proposes amendments to delete the first sentence. DIR struck this language to make §211.21 consistent with §211.11. DIR worked with subject matter experts from state agencies and institutes of higher education who recommended removing this language to be consistent with §211.11. Additionally, DIR proposes amendments to clarify language.

The changes to the chapter apply to state agencies and institutions of higher education. The assessment of the impact of the proposed changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education (ITCHE) in compliance with §2054.121(c), Texas Government Code.

Deborah Hujar, Director of Technology Planning, Policy and Governance, has determined that during the first five-year period following the amendments to 1 TAC Chapter 211 there will be no fiscal impact on state agencies, institutions of higher education and local governments.

Ms. Hujar has further determined that for each year of the first five years following the adoption of the amendments to 1 TAC Chapter 211 there are no anticipated additional economic costs to persons or small businesses required to comply with the amended rules.

Written comments on the proposed amendments may be submitted to Martin Zelinsky, General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701 or to martin.zelinsky@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register*.

SUBCHAPTER A. DEFINITIONS

1 TAC §211.1

The amendments are proposed under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054; and §2054.071, Texas Government Code authorizing the department to approve the designation of joint information manager.

No other code, article or statute is affected by this proposal.

§211.1. Applicable Terms and Technologies for Information Resources Managers.

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

- (1) Board--The governing board of the Department of Information Resources.
- (2) Department--The Department of Information Resources.
- (3) Information resources--The procedures, equipment, and software that are employed, designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information, and associated personnel including consultants and contractors.
- (4) Information Resources Manager--A senior official within the organization who oversees the acquisition and use of information technology within a state agency or institution of higher education, and ensures that all information resources are acquired appropriately, implemented effectively, and in compliance with relevant regulations and policies.

(5) [(4)] Information resources technologies--Data processing and telecommunications hardware, software, services, supplies, personnel, facility resources, maintenance, and training.

(6) [(5)] Joint information resources manager [~~managers~~]-A person that is designated by more than one state agency or institution of higher education and approved by the department to simultaneously serve as the information resources manager for each of the designating agencies or institutions of higher education.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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General Counsel

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SUBCHAPTER B. STATE AGENCY INFORMATION RESOURCES MANAGERS

1 TAC §211.11

The amendments are proposed under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054; and §2054.071, Texas Government Code authorizing the department to approve the designation of joint information manager.

No other code, article or statute is affected by this proposal.

§211.11. Initial Qualifications and Continuing Education.

Any [~~With the exception of a joint information resources manager, any~~] person who is designated by the head of a state agency as the information resources manager of that state agency must be a senior official of the state agency. Joint information resources managers must meet this requirement for one of the state agencies or institutions of higher education that they represent. State agency heads are encouraged, but not required, to make designations on the basis of qualification guidelines provided by the department. [~~Information resources managers for agencies should, as a minimum, possess a four-year college or university degree from a fully accredited institution.~~]

(1) Each designated state agency information resources manager shall [~~be required to~~] complete continuing education requirements provided by the department and approved by the board of the department [~~and provided by the department~~]. The head of each agency is responsible for ensuring their appointee remains qualified to serve as information resources manager.

(2) The department will provide continuing education programs, including educational materials and seminars, to assure that state agency information resources managers remain current in the field of information resources management.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER C. INSTITUTION OF HIGHER EDUCATION INFORMATION RESOURCES MANAGERS

1 TAC §211.20, §211.21

The amendments are proposed under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054; and §2054.071, Texas Government Code authorizing the department to approve the designation of joint information manager.

No other code, article or statute is affected by this proposal.

§211.20. *Selection of Information Resources Managers.*

(a) The head of each institution of higher education is ultimately responsible for the management of state information resources.

(b) The head of an institution of higher education may serve as the institution's information resources manager or may designate another senior official or, in the case of a ["]joint["] information resources manager, an official from another state agency or institution of higher education to serve as the information resources manager on their behalf. [~~If an institution of higher education has separate computing facilities for academic and administrative computing services, the institution may designate separate information resources managers for academic and administrative information resources.~~] The designation of an institution of higher education information resources manager is intended to establish clear accountability for setting policy for information resources management activities, provide for greater coordination of the institution's information activities, and ensure greater visibility of such activities within and between institutions of higher education.

~~[(c) A member of the board of the department may not also serve as the information resources manager of an institution of higher education.]~~

(c) [~~(d)~~] The head of each institution of higher education shall designate an information resources manager. The institution of higher education's designation must contain the name, title, authority, responsibilities, organizational resources, education and experience of the proposed information resources manager in the format prescribed by the department. In the case of a person designated as a joint information resources manager, the institution of higher education's designation must include the name of the state agency or institution of higher education that employs the designated information resources manager. Designation of a joint information resources manager requires prior approval by the department. The department must acknowledge receipt of the designation of the institution of higher education's information resources manager within 30 days after receipt of the designation.

§211.21. *Initial Qualifications and Continuing Education.*

Any person who is designated by the head of an institution of higher education as the information resources manager must be a senior official of that institution. Joint information resources managers must meet this requirement for one of the state agencies or institutions of

higher education that they represent. Institutions of higher education are encouraged, but not required, to make designations on the basis of qualification guidelines provided by the department.

(1) [~~Continuing education is an essential component for information resources managers to remain qualified to serve as an information resources manager.~~] Each designated information resources manager shall complete continuing education requirements provided by the department and approved by the board of the department [~~and provided by the department~~]. The head of each institution of higher education is responsible for ensuring their appointee remains qualified to serve as [~~their~~] information resources manager.

(2) The department will provide continuing education programs, including educational materials and seminars, to assure that institution of higher education information resources managers remain current in the field of information resources management.

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CHAPTER 212. PURCHASES OF COMMODITY ITEMS

The Texas Department of Information Resources (department) proposes amendments to 1 TAC Chapter 212, §§212.1, 212.10, 212.11, 212.20, and 212.30 and new 1 TAC Chapter 212, §§212.41, 212.42, and 212.43 to ensure the rules reflect legislative actions and changes in the purchase of commodity items. The new rules are necessary as a result of the passage of Senate Bill 20 (84R) and House Bill 2000 (84R). The department published a formal notice of rule review in the June 19, 2015, issue of the *Texas Register* (40 TexReg 4011). Review of the sections implements Government Code, §2001.039.

In 1 TAC §212.1, the department added language making all words and terms defined in 1 TAC Chapter 217 have the same meaning in Chapter 212. This change is necessary to include new definitions established by House Bill 2000 (84R) effective September 1, 2015. A definition for "contract" was added to the chapter to clarify the existing rule. Language was added to the definition of "software" to clarify and make it consistent with other definitions. A definition for "request for pricing" was added to implement Senate Bill 20 (84R) effective September 1, 2015. The definition for "state agency" was amended to include institutions of higher education that have been determined to be out of compliance with the purchasing standards required under §51.9337, Education Code. A definition for "statement of work" was added to clarify new rules and requirements as established by Senate Bill 20 (84R) effective September 1, 2015.

In 1 TAC §212.10, language was added to define "institutions of higher education" as established in House Bill 2000 (84R). Additionally, language was added to exclude from the cooperative contracts program all contracts over \$1 million. This exclusion

was added to ensure compliance with Section 15 of Senate Bill 20 (84R) effective September 1, 2015.

Amendments to 1 TAC §212.11 are necessary to implement new requirements for state agencies purchasing commodity items under this chapter as established by Section 15 of Senate Bill 20 (84R) effective September 1, 2015.

In 1 TAC §212.20, language was added to clarify and emphasize the existing rule. Specifically, amendments clarify that the department shall not issue an exemption for a purchase that has already taken place or solely on the basis that a solicitation has already been issued.

In §212.20(d) and §212.30(d) "calendar day" was amended to "business day" to be consistent with the chapter and DIR policy.

Subchapter E and subsequent new rules were added to account for the new responsibilities added to DIR by Section 16 of Senate Bill 20 (84R) effective September 1, 2015. In implementing Senate Bill 20 (84R), it is not the department's intent to interfere with agency fiscal management or operations.

Subchapter F and subsequent new rules were added to account for the institutions of higher education that have been determined to be out of compliance with the purchasing standards required under §51.9337, Education Code.

The changes to the chapter apply to state agencies and institutions of higher education. The assessment of the impact of the proposed changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education (ITCHE) in compliance with §2054.121(c), Texas Government Code.

Grace Windbigler, Director of the Technology Sourcing Office, anticipates that there may be a material impact on some state agencies, but DIR does not have sufficient information at this time to calculate such impact. There will be no impact to institutions of higher education or local governments.

Ms. Windbigler has further determined that for each year of the first five years following the adoption of the new sections and amendments to 1 TAC Chapter 212 there are no anticipated additional economic costs to persons or small businesses required to comply with the amended chapter.

Written comments on the proposal may be submitted to Martin Zelinsky, General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701 or to martin.zelinsky@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register*.

SUBCHAPTER A. DEFINITIONS

1 TAC §212.1

The amendments to existing rule are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; §2157.068(f), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2157; and §2157.0685(b)(2), Texas Government Code, which authorizes the department to adopt rules as necessary to advise agencies regarding the posting of statements of work.

No other code, article or statute is affected by this proposal.

§212.1. *Commodity Items Definitions.*

Words and terms defined in Chapter 217 shall have those same meanings when used in this chapter. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commodity items--commercially available Software, Hardware and Technology Services that are generally available to businesses or the public and for which the department determines that a reasonable demand exists in two or more state agencies.

(2) Contract--a binding agreement between a vendor and DIR customer pursuant to a cooperative contract issued by the department under the authority of §2157.068, Texas Government Code. All contracts shall be subject to the terms and requirements of the underlying cooperative contract.

(A) Any of the following will constitute a contract:

(i) The DIR customer's fully executed purchase order; and

(ii) Purchase order change notice.

(B) Any of the following do not constitute a contract for purposes of determining dollar value:

(i) Optional extensions or renewals;

(ii) Documents executed for purposes of encumbering funds but not constituting a binding transaction;

(iii) Any related document without an accompanying purchase order, including but not limited to statements of work, license agreements, maintenance agreements, or service agreements.

(3) [~~2~~] Software--commercially available programs that operate hardware. The term includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. The term does not include hardware.

(4) [~~3~~] Hardware--the physical technology used to process, manage, store, transmit, receive or deliver information. The term does not include software.

(5) [~~4~~] Technology services--all the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. The term includes seat management, staffing augmentation, training, maintenance and subscription services. The term does not include telecommunications services.

(6) [~~5~~] Seat management--services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary Hardware, Software and Technology Services.

(7) [~~6~~] Purchase--to obtain ownership, any rights with respect to the use, transfer of ownership, or delivery of commodity items through acquisition, lease or any other method.

(8) Request for pricing--An invitation for a vendor to submit competitive prices for an existing contract, under the existing terms and conditions, or for a prospective contract. A state agency may request additional information to evaluate the vendor and its response.

(9) [~~7~~] State agency--a department, commission, board, office, council, authority or other agency in the executive branch or judicial branch of state government, that is created by the constitution or a statute of the state. The term does not include institutions of higher education, as defined in §61.003, Education Code, unless an institution has been determined to be out of compliance with the purchasing standards required under §51.9337, Education Code.

(10) Statement of Work--a document that states the requirements for a contract for certain services, including deliverables, performance specifications and other requirements that are not specified in a contract awarded by the department under Texas Government Code §2157.068 for contracts more than \$50,000; also referred to as SOW. A statement of work is not applicable to:

(A) IT staffing services;

(B) contracts exclusively for hardware or software and not including services;

(C) the vendors' standard commercially available support, maintenance, and warranties as documented in the DIR cooperative contract or modified in accordance with the DIR cooperative contract provision addressing modification of contract terms and/or amendments.

(11) [(8)] Board--the governing board of the Department of Information Resources.

(12) [(9)] Director--the Executive Director of the Department of Information Resources.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Martin H. Zelinsky

General Counsel

Department of Information Resources

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SUBCHAPTER B. REQUIRED PURCHASES

1 TAC §212.10, §212.11

The amendments to existing rules are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; §2157.068(f), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2157; and §2157.0685(b)(2), Texas Government Code, which authorizes the department to adopt rules as necessary to advise agencies regarding the posting of statements of work.

No other code, article or statute is affected by this proposal.

§212.10. *Scope of Requirement.*

Each state agency, excluding public, private or independent institutions of higher education, must purchase any commodity items that are listed under the commodity codes under the department's responsibility in accordance with a contract developed by the department, unless the state agency first obtains an exemption from this requirement under Subchapter C of this chapter; obtains express prior approval from the Legislative Budget Board for the expenditure necessary for the purchase; or, obtains a certification from the department, under Subchapter D of this chapter, that the commodity item is not available for purchase under an existing contract developed by the department unless the value of that contract exceeds \$1 million.

§212.11. *List of Commodity Items.*

The department shall compile and maintain a list of commodity items available for purchase through the department. The department shall make the list available on the department's website.

(1) For a contract with a value of no more than \$50,000, the state agency may directly award the contract to a vendor or reseller included in the category to which the contract relates without submission of a price request to other vendors in the same category;

(2) For a contract with a value of more than \$50,000 but not more than \$150,000, the state agency must submit a request for pricing to at least three vendors or resellers included in the category to which the contract relates or all vendors in the category;

(3) For a contract with a value of more than \$150,000 but not more than \$1 million, the state agency must submit a request for pricing to at least six vendors or resellers included in the category to which the contract relates or all vendors in the category if the category has fewer than six vendors; and

(4) Prior to issuing a solicitation for a commodity item that is estimated to exceed \$1 million the state agency may request pricing from six vendors or resellers in the category in order to document qualification for the blanket exemption for purchases over \$1 million.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER C. EXEMPTIONS

1 TAC §212.20

The amendments to existing rule are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; §2157.068(f), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2157; and §2157.0685(b)(2), Texas Government Code, which authorizes the department to adopt rules as necessary to advise agencies regarding the posting of statements of work.

No other code, article or statute is affected by this proposal.

§212.20. *Written Request and Approval Process.*

(a) A state agency may submit a written request to the department for an exemption from the commodity items purchasing requirement described in Subchapter B of this chapter. The state agency shall not take any action on the contemplated purchase until the request for exemption is either approved or denied by the department.

(b) A request for an exemption must be in writing and include sufficient documentation to support the validity of the request. The department may request additional information in order to determine whether the proposed purchase is in the best interest of the state. The department shall not issue an exemption approval for a purchase that

has already taken place. The department shall not issue an exemption approval solely on the basis that a solicitation has already been issued.

(c) Upon review of a written request for exemption, the department shall issue, in writing, either an approval or denial. A written approval shall include all pertinent terms and conditions of the exemption, including but not limited to, the dollar limit, expiration date, the quantity, list of specific commodity items, and any other conditions related to the proposed purchase. A written denial shall include the basis for the denial.

(d) If the department has not issued a written denial of the exemption request within fifteen (15) business [calendar] days following the date of its receipt of the request, or the date of receipt of requested additional information, the request for the exemption shall be deemed to have been approved for an amount equal to the total dollar amount of the proposed purchase or for the period of time described in the exemption request.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Martin H. Zelinsky

General Counsel

Department of Information Resources

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For further information, please call: (512) 463-6124



SUBCHAPTER D. CERTIFICATION TO PURCHASE FROM LOCAL GOVERNMENT PURCHASING COOPERATIVES

1 TAC §212.30

The amendments to existing rule are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; §2157.068(f), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2157; and §2157.0685(b)(2), Texas Government Code, which authorizes the department to adopt rules as necessary to advise agencies regarding the posting of statements of work.

No other code, article or statute is affected by this proposal.

§212.30. *Written Request and Certification Process.*

(a) A state agency may submit a written request to the department for a written certification that a commodity item is not available for purchase under an existing contract developed by the department, so that the state agency may purchase the commodity item through a contract developed by a local government purchasing cooperative under Texas Government Code Chapter 791. The state agency shall not take any action on the contemplated purchase until the request for certification is either issued or denied by the department.

(b) A request for certification must be in writing and include sufficient documentation to support the validity of the request. The department may request additional information in order to determine whether the certification should be issued or denied if the commodity

item is available for purchase under an existing contract developed by the department.

(c) Upon review of a written request for certification, the department shall issue, in writing, either a certification or denial. A written certification shall include all pertinent terms and conditions of the certification, including but not limited to, the specific commodity item, expiration date, and quantity, as applicable, and any other conditions related to the proposed purchase. A written denial shall include the basis for the denial.

(d) If the department has not issued a written denial of the request for certification within fifteen (15) business [calendar] days following the date of its receipt of the request, or the date of receipt of requested additional information, the certification shall be deemed to have been issued for the period of time described in the certification request.

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SUBCHAPTER E. APPROVAL OF STATEMENT OF WORK

1 TAC §§212.41 - 212.43

The new rules are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; §2157.068(f), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2157; and §2157.0685(b)(2), Texas Government Code, which authorizes the department to adopt rules as necessary to advise agencies regarding the posting of statements of work.

No other code, article or statute is affected by this proposal.

§212.41. *Statement of Work.*

(a) For a contract awarded by the department under Government Code §2157.068 that requires a state agency to develop and execute a statement of work to initiate services under the contract, the state agency must consult with the department before the submission of a statement of work to a vendor as follows:

(1) Submit a completed SOW to the department for review at least thirty (30) business days prior to submission of the SOW to vendors to provide sufficient time for department review;

(2) Provide SOW contents including but not limited to: scope of the project, milestones, deliverables description, schedule, and acceptance criteria;

(3) Provide the list of DIR cooperative contracts to which the SOW will be advertised; and

(4) The department may accept or reject the submitted SOW. A state agency may not submit the SOW to vendors until the

department has issued written approval. If rejected, the state agency may resubmit with required modifications. The department will not issue retroactive or backdated reviews.

(b) Following execution of the final SOW by the state agency and vendor, the state agency must submit the signed SOW to the department for its signature. The department will review the statement of work and determine whether it will be signed or rejected. If the department rejects the SOW, the department will notify the state agency of the reason(s) for rejection. The department must sign the statement of work before it becomes valid and any money is paid to a vendor. The department will not issue retroactive or backdated signatures. The department signature affixed to the statement of work will verify only that the scope of work is within the scope of the DIR contract being utilized. The department signature does not make the department a party to the agreement, and the department will not be responsible for any other state agency's obligations. The department signature does not verify or assure any other relevant fact including, but not limited to, the following:

- (1) That funding is appropriate or sufficiently available;
- (2) That the appropriate methodology was chosen by the state agency;
- (3) That the appropriate vendor was selected; or
- (4) That the scope of work documented by the state agency will successfully achieve a goal or projected outcome.

(c) Upon execution of the SOW, each statement of work entered into by the state agency will be posted on the state agency's internet website as follows:

- (1) Post the SOW in its entirety, subject to the exceptions in the Texas Public Information Act and opinions of the Office of Attorney General;
- (2) Maintain the posting, at a minimum, throughout the term of the SOW, including any renewals or extensions;
- (3) Maintain a listing of the SOWs in alphabetical order by vendor name or numerical order by contract number in a central location; and
- (4) Maintain a current state agency contact person with related email address and phone number to contact for information regarding the SOW.

§212.42. Expedited Requests for Review of a Statement of Work.

(a) In the event a state agency experiences an unforeseeable circumstance that requires immediate attention but is not considered an Emergency Procurement as defined in 34 TAC §20.32(21), the state agency may submit an expedited request for review.

(b) The expedited request for review must include a statement from the head of the requesting state agency, or his/her designee, describing the circumstances and justification for expedited review by the department.

§212.43. Expedited Requests for Signature of a Statement of Work.

(a) In the event a state agency experiences an unforeseeable circumstance that requires immediate attention but is not considered an Emergency Procurement as defined in 34 TAC §20.32(21), the state agency may submit an expedited request for signature.

(b) The expedited request for signature must include a statement from the head of the requesting state agency, or his/her designee, describing the circumstances and justification for expedited signature by the department.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Martin H. Zelinsky

General Counsel

Department of Information Resources

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SUBCHAPTER F. INSTITUTIONS OF HIGHER EDUCATION

1 TAC §212.50

The new rule is proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; §2157.068(f), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2157; and §2157.0685(b)(2), Texas Government Code, which authorizes the department to adopt rules as necessary to advise agencies regarding the posting of statements of work.

No other code, article or statute is affected by this proposal.

§212.50. Institutions of Higher Education.

An institution of higher education must notify the department in writing within thirty calendar days if:

(1) the institution is determined to be out of compliance with the purchasing standards required under §51.9337, Education Code; or

(2) the institution is determined to have regained its acquisition authority under §51.9335, Education Code.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 215. STATEWIDE TECHNOLOGY CENTERS FOR DATA AND DISASTER RECOVERY SERVICES

The Texas Department of Information Resources (department) proposes amendments to 1 TAC Chapter 215, §§215.2, 215.13, and 215.33 to ensure the rules more accurately reflect legislative actions and changes in the use of statewide technology centers.

The amendment to 1 TAC §215.2 aligns the definition of cloud with HB 3707 (84R) effective September 1, 2105. The legislation amended §2157.007, Texas Government Code, to replace the term "Advanced Internet based computing service" and its definition with "Cloud computing services" as defined by the United States Department of Commerce National Institute of Standards and Technology (NIST). Amendments were also made to 1 TAC Chapter 215, §215.13 and §215.33 to ensure consistency with the newly defined cloud computing service throughout the chapter.

Additional amendments to 1 TAC Chapter 215, §215.13 and §215.33 include adding "Hosting and management of telecommunication hardware for emergency services" to the list of Data Center Services. The amended rule is necessary, in part, as the result of passage of Senate Bill 866 (83R), effective as of May 18, 2013, which legislation amended §2054.376(a), Texas Government Code, to exclude telecommunication services, advanced communication services, and information services from the scope of a statewide technology center. The amended rule reflects the distinction between the language of Senate Bill 866 (83R) and existing statute in which both data processing and telecommunication equipment, by definition, is considered to be in scope for statewide technology center services.

The department selected multiple service providers through competitive procurements for the management of statewide technology centers that included all information resources technologies. Section 2054.003, Texas Government Code, defines information resources technologies to include data processing and telecommunications hardware and services. The subsequent passage of Senate Bill 866 (83R) now excludes the ability of a statewide technology center to provide telecommunication services, as those services are defined in the legislation.

Although the statute distinguishes data processing equipment from telecommunications equipment, in the context of the current state of technology, the equipment used for either purpose is often one in the same. The statewide technology centers currently host and manage data processing equipment for state agencies. The department has been approached by one or more state agencies regarding the ability for the statewide technology center to host and manage telecommunication equipment for emergency services. In addition, the current outsourcing arrangement realizes additional cost savings to the state through increased compute volumes. Therefore, given the lack of distinction between telecommunication equipment and data processing equipment and the fact that the addition of telecommunication equipment for emergency services to the technology center will result in increased overall compute volume, the department, through its service providers, anticipates the future likelihood of hosting and managing telecommunication equipment for emergency services. In providing for the management and hosting of telecommunication equipment for emergency services, the department will require our customers to coordinate with a third party provider of telecommunication services, leveraging existing or competitively procured contracts separate and distinct from the statewide technology center contracts. The amendments to 1 TAC Chapter 215, §215.13 and §215.33 clarify that the department may provide the service of hosting and managing telecommunication equipment for emergency services, but may not provide the related telecommunication services.

The changes to the chapter apply to state agencies, local government and institutions of higher education. The assessment

of the impact of the proposed changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education in compliance with §2054.121(c), Texas Government Code.

Sally Ward, Data Center Services Division Director, has determined that during the first five-year period following the amendments to 1 TAC Chapter 215, §§215.2, 215.13, and 215.33, there will be no fiscal impact on state agencies, institutions of higher education and local governments. The alignment of certain defined terms with recognized national standards and clarification of those services that are statutorily permissible through the statewide technology center increases the effectiveness of the rule for existing and potential agency, institutions, and local government customers.

Ms. Ward has further determined that for each year of the first five years following the adoption of the amendments to 1 TAC Chapter 215, §§215.2, 215.13, and 215.33 there are no anticipated additional economic costs to persons or small businesses required to comply with the amended rules.

Written comments on the proposed amendments may be submitted to Chad Lersch, Assistant General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701 or to chad.lersch@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register*.

SUBCHAPTER A. GENERAL PURPOSE AND DEFINITIONS

1 TAC §215.2

The amendments to existing rule are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; and §2054.379, Texas Government Code, which authorizes the department to adopt rules related to Statewide Technology Centers.

No other code, article or statute is affected by this proposal.

§215.2. Applicable Terms and Technologies for Statewide Technology Centers for Data and Disaster Recovery Services.

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

(1) Administrative Fees--Those fees as authorized under §2054.380, Texas Government Code.

(2) Application--A separately identifiable and interrelated set of information resources technologies that allows for the manipulation of information resources to support specifically defined objectives on a computer.

(3) Bulk Print and Mail--A service capable of offering high-volume printing and mail needs, such as the production of statements, notifications, letters and other communications in a highly secure and cost-effective manner.

(4) Cloud computing services--A model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction [Has the same meaning as "Advanced Internet-Based Computing Service" as defined in §2157.007(a), Texas Government Code].

(5) Customer Representative--Primary point of contact for a Data Center Services Customer who has authority to request services and obligate funds for Data Center Services.

(6) Data Center--Physical location where computer and data processing equipment is installed and managed.

(7) Data Center Services (DCS)--See Statewide Technology Centers in this chapter.

(8) DCS Customer--Any state or local government entity receiving DCS services.

(9) Department--The Department of Information Resources.

(10) Designated State Agency--A state agency selected for required consolidation at a statewide technology center as specified in §2054.385, Texas Government Code.

(11) Disaster Recovery--The process of planning for, and recovering, information infrastructure after a disaster.

(12) Discretionary State Agency--A state agency voluntarily receiving Data Center Services from a statewide technology center.

(13) Government Entity--A state agency or local government as defined herein.

(14) Information Resources--As defined in §2054.003(7), Texas Government Code.

(15) Information Resources Manager (IRM)--As defined in §2054.071, Texas Government Code.

(16) Information Resources Technologies--As defined in §2054.003(8), Texas Government Code.

(17) Interagency Agreement--An agreement, as authorized by Chapter 771, Texas Government Code, entered into between the department and any state agency or institution of higher education. Statewide Technology Center customer pursuant to which Services are provided to such customer.

(18) Interlocal Agreement--An agreement, as authorized by Chapter 791, Texas Government Code, entered into between the department and any local government Statewide Technology Center customer pursuant to which services are provided to such customer.

(19) ITCHE--Information Technology Council for Higher Education.

(20) Local Government--A county, municipality, special district, school district, junior college district, or other political subdivision of the state.

(21) Mainframe--A high-end computer processor, with related peripheral devices, capable of supporting large volumes of batch processing, high performance on-line transaction processing systems, and extensive data storage and retrieval.

(22) Network--Means collectively, WAN, LAN, and other communication or transport networks.

(23) Partner Group--To effectively engage DCS customers in enterprise decision making, governance committees use a representational approach. DCS customers are organized into groups and each governance committee includes the participation of at least one representative from each group.

(24) Server--Any computer that provides shared processing or resources (e.g. Application processing, identity management, database, mail, proxy, firewalls, backup capabilities, print, and fax services) over the Network. A Server includes associated peripherals (e.g.

local storage devices, attachments to centralized storage, monitor, keyboard, pointing device, tape drives, and external disk arrays) and is identified by a unique manufacturer's serial number.

(25) Server Consolidation--The mandatory consolidation of select servers operated by Designated Agencies from the legacy data centers to the Statewide Technology Center.

(26) Service Catalog--The online catalog of the services, equipment, software, and configurations of services, equipment, and software based on deployment standards.

(27) Service Provider--Multi-sourcing Service Integrator (MSI) and Service Component Provider (SCP) vendors offering managed services through the Statewide Technology Center.

(28) SMM--Service Management Manual.

(29) Statewide Technology Center--Consolidated data services managed by contracted vendors; also referred to as Data Center Services (DCS).

(30) Technology Solution Group--A technology steering committee that approves technology plans and technology standards for hardware and software configurations related to Data Center Services.

(31) Technology Plan--A Data Center Services Plan that reports how the service provider will support DIR and DCS Customers in advancing their technology objectives and strategies.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Martin H. Zelinsky

General Counsel

Department of Information Resources

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SUBCHAPTER B. DATA CENTER SERVICES FOR STATE AGENCIES AND LOCAL GOVERNMENT

1 TAC §215.13

The amendments to existing rule are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; and §2054.379, Texas Government Code, which authorizes the department to adopt rules related to Statewide Technology Centers.

No other code, article or statute is affected by this proposal.

§215.13. *Data Center Services.*

(a) DCS services include:

(1) Mainframe services

(2) Server services, including cloud computing [hosted] services

(3) Hosting and management of telecommunication hardware for emergency services

- (4) [~~3~~] Storage services, including cloud hosted services
- (5) [~~4~~] Bulk Print and mail services
- (6) [~~5~~] Network services for DCS connectivity
- (7) [~~6~~] Disaster Recovery services
- (8) [~~7~~] Infrastructure Service Integration Management
- (9) [~~8~~] Application Lifecycle Management

(b) With the exception of subsection (a)(8) of section, unless an exemption has been requested and approved by the department pursuant to §215.10(a)(1)(B) of this chapter, designated DCS Customers shall not procure the services specified in this section outside the DCS program.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER C. DATA CENTER SERVICES FOR INSTITUTIONS OF HIGHER EDUCATION

1 TAC §215.33

The amendments to existing rule are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code; and §2054.379, Texas Government Code, which authorizes the department to adopt rules related to Statewide Technology Centers.

No other code, article or statute is affected by this proposal.

§215.33. *Data Center Services.*

DCS services include:

- (1) Mainframe services
- (2) Server services, including cloud computing [~~hosted~~] services
- (3) Hosting and management of telecommunication hardware for emergency services
- (4) [~~3~~] Storage services, including cloud hosted services
- (5) [~~4~~] Bulk Print and mail services
- (6) [~~5~~] Network services for DCS connectivity
- (7) [~~6~~] Disaster Recovery services
- (8) [~~7~~] Infrastructure Service Integration Management
- (9) [~~8~~] Application Lifecycle Management

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 217. PROCUREMENT OF INFORMATION RESOURCES

SUBCHAPTER A. DEFINITIONS

1 TAC §§217.1 - 217.5

The Texas Department of Information Resources (department) proposes amendments to 1 TAC Chapter 217, §§217.1, 217.2, and 217.3 and proposes new §217.4 and §217.5 to ensure the rules accurately reflect policies and procedures and to implement House Bill 2000 (84R). The department published a formal notice of rule review in the June 19, 2015, issue of the *Texas Register* (40 TexReg 4011). Review of the sections implements Government Code, §2001.039.

In §217.1, the department proposes amendments to add language to the definition of "computer equipment". The current language is out of date and does not account for new technology. The proposed amendments reflect current policies and practices.

In §217.2, the department proposes amendments to clarify the definition of "institutions of higher education" to implement House Bill 2000 (84R).

In §217.3, the department proposes amendments to the definition of "state agency" to implement House Bill 2000 (84R).

In §217.4, the department proposes a new rule to define a "quasi-state agency" to implement House Bill 2000 (84R).

In §217.5 the department proposes a new rule to define a "private school" to implement House Bill 2000 (84R).

The changes to the chapter apply to state agencies and institutions of higher education. The assessment of the impact of the proposed changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education (ITCHE) in compliance with §2054.121(c), Texas Government Code.

Grace Windbigler, Director of the Technology Sourcing Office, has determined that during the first five-year period following the amendments to 1 TAC Chapter 217 there will be no fiscal impact on state agencies, institutions of higher education and local governments.

Ms. Windbigler has further determined that for each year of the first five years following the adoption of the amendments to 1 TAC Chapter 217 there are no anticipated additional economic costs to persons or small businesses required to comply with the rules.

Written comments on the proposed amendments and new rules may be submitted to Martin Zelinsky, General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701 or to martin.zelinsky@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments to existing rules and new rules are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, and House Bill 2000 (84R).

No other code, article or statute is affected by this proposal.

§217.1. Key Terms for Procurement of Information Resources.

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

(1) Computer Equipment--A desktop, [ø] notebook, or tablet computer and includes a computer monitor or other display device that does not contain a tuner.

(2) Department--The Department of Information Resources.

(3) Manufacturer--A person:

(A) who manufactures or manufactured computer equipment under a brand that:

(i) the person owns or owned; or

(ii) the person is or was licensed to use, other than under a license to manufacture Computer Equipment for delivery exclusively to or at the order of the licensor;

(B) who sells or sold Computer Equipment manufactured by others under a brand that:

(i) the person owns or owned; or

(ii) the person is or was licensed to use, other than under a license to manufacture Computer Equipment for delivery exclusively to or at the order of the licensor;

(C) who manufactures or manufactured Computer Equipment without affixing a brand;

(D) who manufactures or manufactured Computer Equipment to which the person affixes or affixed a brand that:

(i) the person does not or has not owned; or

(ii) the person is not or was not licensed to use; or

(E) who imports or imported computer equipment manufactured outside the United States into the United States unless at the time of importation the company or licensee that sells or sold the Computer Equipment to the importer has or had assets or a presence in the United States sufficient to be considered the Manufacturer.

§217.2. Institution of Higher Education.

A university system, [ø] institution of higher education, or private or independent institution of higher education as defined by §61.003, Texas Education Code.

§217.3. State Agency.

A department, commission, board, office, or other agency that is in the executive or legislative branch of state government and that was created by the constitution or a statute, excluding a public or private [an] institution of higher education as defined by §61.003, Texas Education Code; or the supreme court, the court of criminal appeals, a court of appeals, or the Texas Judicial Council or another agency in the judicial branch of state government.

§217.4. Quasi-State Agency.

The Electric Reliability Council of Texas, the Lower Colorado River Authority, a volunteer fire department, as defined by §152.001, Tax Code, or other quasi-state agency that was created by the constitution or a statute.

§217.5. Private School.

A private school as defined by §5.001, Education Code.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 2. MEDICAID VISION CARE PROGRAM

1 TAC §§354.1015, 354.1017, 354.1021, 354.1023, 354.1025

The Texas Health and Human Services Commission (HHSC) proposes amendments to §354.1015, concerning Benefits and Limitations; §354.1017, concerning Specifications for Eyewear; §354.1021, concerning Additional Claims Information Requirements; §354.1023, concerning Optometric Services Provider; and §354.1025, concerning Competitive Procurement of Vision Care Services.

Background and Justification

HHSC proposes to amend §§354.1015, 354.1017, 354.1021, 354.1023, and 354.1025 to update and simplify rule requirements related to vision care. Simplifying these rules allows HHSC more flexibility in developing timely and evidence-based medical policy.

The existing rules provide detailed information on the provision of vision benefits. The current level of detail requires HHSC to amend the rules to implement simple updates and changes to the Texas Medicaid medical policy. The proposed rule amendments will align with legal requirements for the benefits and associated limitations while allowing for flexibility and enhanced timeliness in adopting future changes to medical benefits.

Section-by-Section Summary

Proposed amended §354.1015 simplifies language that currently specifies which Medicaid providers may receive reimbursement for vision services, simplifies specific language regarding allowable eyewear lens materials, clarifies that contact lenses may

be provided without prior authorization in the case of an emergency, and clarifies reimbursement for prosthetic and non-prosthetic eyeglass repair. Other nonsubstantive language changes are also proposed for this rule.

Proposed amended §354.1017 simplifies language that currently specifies allowable eyewear lens and frame materials, and deletes specific minimum prescriptions for bifocal and trifocal lenses.

Proposed amended §354.1021 simplifies language that currently specifies which Medicaid providers may receive reimbursement for vision services and makes nonsubstantive language changes, such as correcting capitalization and punctuation.

Proposed amended §354.1023 simplifies language that currently specifies which Medicaid providers may receive reimbursement for vision services and makes nonsubstantive language changes, such as correcting capitalization and punctuation.

Proposed amended §354.1025 makes only nonsubstantive language changes, such as correcting capitalization and punctuation.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rules are in effect, there will be no fiscal impact to state and local government.

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

Small and Micro-business Impact Analysis

HHSC has determined that there will be no effect on small businesses or micro businesses to comply with the amended rules, as they will not be required to alter their business practices as a result of the amended rules.

Public Benefit

Kay Ghahremani, Associate Commissioner for Medicaid/CHIP, has determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit of the amended rules will be that Medicaid benefits related to vision care will be clearly and consistently communicated to Medicaid recipients and other stakeholders. The public will also benefit from HHSC's enhanced ability to update medical benefits in a more timely fashion.

Regulatory Analysis

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

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist

in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Alexander Melis, Project Manager, 4900 North Lamar, Austin, Texas, 78751, Mail Code H370; by fax to (512) 730-7472; or by e-mail to alex.melis@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

No public hearing is planned related to these proposed rule amendments.

Statutory Authority

The amendments are proposed 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.

The proposed amendments affect Texas Human Resources Code Chapter 32 and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1015. *Benefits and Limitations.*

(a) Except as specified in §354.1023 of this division (relating to Optometric Services Provider)~~;~~ Optometric Services Provider the services addressed in this subchapter are those optometric services available to Medicaid recipients who are 21 years old or older. Services are available to Medicaid recipients under 21 years old through the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program~~;~~ Benefits and Limitations described in [4 TAC] §363.502 of this title (relating to Benefits and Limitations).

(b) The amount, duration, and scope of optometric services available through the Texas Medicaid Program are established according to applicable federal regulations, the Texas state plan for medical assistance under Title XIX of the Social Security Act, state law, and Texas Health and Human Services Commission (HHSC) rules. Information regarding benefits and limitations is available to providers of these services through the Texas Medicaid Provider Procedures Manual issued to each provider upon enrollment in the Texas Medicaid Program.

(c) The benefits and limitations applicable to optometric services available through the Texas Medicaid Program to eligible recipients who are 21 years old or older are as follows:

(1) Provider eligibility. A provider must be qualified to provide optometric services under Texas Medicaid [a physician or optometrist] and enrolled in the Texas Medicaid Program at the time the service is provided [in order] to be eligible for reimbursement by the program.

(2) Reimbursable services.

(A) Examination. One examination of the eyes by refraction may be provided to each eligible recipient every 24 months. This limit does not apply to diagnostic or other treatment of the eye for medical conditions.

(B) Prosthetic eyewear. Prosthetic eyewear that meets state and federal specifications, including contact lenses and eyeglasses (lenses and frames) [glass or plastic lenses in frames], is a program benefit provided to an eligible recipient if the eyewear is prescribed for a congenital abnormality or defect~~;~~ or an acquired condition as a result

of trauma or cataract removal. The following benefits and limitations apply to prosthetic eyewear:

(i) Medically necessary temporary lenses are reimbursed during post-surgical cataract convalescence. The convalescence period is considered to be the four-month period following the date of cataract surgery.

(ii) Only one pair of permanent prosthetic lenses may be dispensed as a program benefit.

(iii) Replacement of prosthetic eyewear is reimbursed when the eyewear is lost, stolen, or damaged beyond repair.

(iv) Prosthetic eyewear is reimbursed when the eyewear is required due to a change in visual acuity measured in diopters or axis changes as defined by HHSC [the Commission or its designee].

(v) Repairs to prosthetic eyeglasses (lenses and frames) [eyewear] are reimbursable [if the cost of materials exceeds \$2.00]. Repairs for which the cost of materials is \$2.00 or less are [not separately reimbursable, but are] the responsibility of the provider and are included in the rate for eyewear. The provider may not bill the recipient for these services.

(C) Non-prosthetic eyewear. Non-prosthetic eyewear includes contact lenses and eyeglasses (lenses and frames) that meet federal and state specifications [glass or plastic lenses in frames]. Non-prosthetic eyewear is a program benefit when the eyewear is medically necessary to correct defects in vision. This eyewear is provided to an eligible recipient only once every 24 months unless the recipient experiences a visual acuity change measured in diopters or axis changes as defined by HHSC [the Commission] or its designee. A new 24-month benefit period for eyewear begins with the replacement of non-prosthetic eyewear due to a change in visual acuity measured in diopters or axis changes as defined by HHSC [the Commission] or its designee.

(i) Contact lenses require prior authorization by HHSC [the Commission] or its designee, unless provided in an emergency. Prior authorization decisions are based on the provider's written documentation supporting the need for contact lenses as the only means of correcting the vision defect.

(ii) Non-prosthetic eyewear that is lost or stolen is not reimbursed by the program.

(iii) Repairs to non-prosthetic eyewear [for which the cost of materials exceeds \$2.00] are not reimbursable. [Repairs for which the cost of materials is \$2.00 or less are not separately reimbursable, but are the responsibility of the provider and are included in the rate for eyewear. The provider may not bill the recipient for repairs for which the cost of materials is \$2.00 or less.]

§354.1017. Specifications for Eyewear.

The provider must ensure that eyewear meets the following specifications.

(1) Lenses must [are clear glass or plastic,] meet federal and state specifications[-] and [meet] all standards of the American standard prescription requirements for first quality [glass and plastic] lenses and dress eyewear.

{(2) Frames are zylonite, metal, or combination metal/zylonite.}

(2) [(3)] Standard frame sizes [of the frames] are dispensed at no cost to the eligible recipient.

(3) An eyeglass supplier must show each eligible recipient a minimum selection of frame styles and colors as required by the Texas Health and Human Services Commission policy [choice of: three styles

of zylonite, metal, or a combination of zylonite/metal frames appropriate for male and female in a choice of three colors].

(4) Frames are only those manufactured in the United States of America, unless foreign-made frames are comparable in quality to and less expensive than American made-frames. Lenses are only those manufactured in the United States of America, unless foreign-made lenses are comparable in quality to and less expensive than American-made lenses.

(5) Frames are serviceable and meet prescription quality standards.

(6) Lenses and frame materials are new.

{(7) Bifocal lenses are a minimum kryptoe 22 MM flat top lens or equivalent.}

{(8) Trifocal lenses are a minimum flat top 7/25 lens or equivalent.}

(7) [(9)] Supplies are at least equivalent in quality to program eyewear provided under this division [chapter] at no cost to the eligible recipients.

(8) [(10)] All repair materials billed to Texas Medicaid must be new and at least equivalent to the original item and meet the specifications for prosthetic eyewear cited in these provisions.

§354.1021. Additional Claims Information Requirements.

Providers must meet the claim criteria established in the provisions of this division [subchapter] for optometric services and the provisions for participation in the Medicaid program established under Division 1, Medicaid Procedures for Providers, and Division 11, General Administration, of this subchapter [Subchapter A, Purchased Health Services]. In addition to [Besides] the claims information requirements established in §354.1001 of this subchapter (relating to Claim Information Requirements) [-; Claim Information Requirements, of this chapter], the following information is required for claims for vision care services:

(1) name [Name], address, and Medicaid provider identification number of the ordering provider, as appropriate;

(2) description [Description] of lenses and frames provided;

(3) provider's [Provider's] signature on the claim form [of the physician, optometrist, or supplier], including degrees or credentials, verifying the diopter or axis changes required for the dispensing of replacement eyewear;

(4) claims [Claims] for eyewear with special features must be accompanied by a signed form by the recipient that acknowledges his selection of eyewear that is beyond the specifications for eyewear in §354.1017 of this division (relating to Specifications for Eyewear)[-; Specifications for Eyewear]. A signed patient certification satisfies this requirement for claims that are electronically submitted;

(5) if [If] the claim is for replacement of prosthetic eyewear that was lost, stolen, or damaged beyond repair, the recipient must sign the claim form or, in the case of providers who electronically bill, a patient certification; and[-]

(6) if [If] the claim is for vision care services provided to a Medicaid recipient residing in a skilled nursing facility or an intermediate care facility, the claim must indicate the name of the physician who ordered the services and the name of the facility where the recipient resides as the place of service.

§354.1023. Optometric Services Provider.

(a) [Optometric services are defined as vision care services provided by a physician or optometrist.] In addition to those services described in §354.1015 and §363.502 of this title (both relating to Benefits and Limitations), and subject to the specifications, conditions, limitations, and requirements established by the Texas Health and Human Services Commission (HHSC) [~~Commission~~] or its designee, diagnostic and treatment services performed by a provider qualified to provide optometric services under Texas Medicaid [~~provided by an optometrist or physician~~] are covered by the Texas Medicaid Program.

(b) To be covered, the evaluation, diagnostic, and treatment services must [~~shall~~] be:

(1) within the provider's [~~Within the optometrist's or physician's~~] scope of practice, as defined by state law;

(2) reasonable [~~Reasonable~~] and medically necessary as determined by HHSC [~~the Commission or its designee~~]; and

(3) provided [~~Provided~~] to an eligible recipient by a qualified provider [~~an optometrist or physician~~] enrolled in the Texas Medicaid Program at the time the service(s) are provided.

§354.1025. *Competitive Procurement of Vision Care Services.*

The Texas Health and Human Services Commission (HHSC) may establish a process for procuring eyewear that encourages competition and results in savings to the state.

(1) HHSC will determine what categories or individual types of eyewear may be procured through a competitive process using the following criteria:

(A) the cost effectiveness of competitively procuring a particular category or type of eyewear; and

(B) providing quality vision care services for recipients [~~beneficiaries~~].

(2) HHSC may limit the number of providers with whom it will contract to supply eyewear using the following criteria:

(A) responses to the competitive procurement request for proposal;

(B) recipient [~~beneficiary~~] accessibility to vision services; and

(C) program cost effectiveness.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 24, 2015.

TRD-201503370

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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



SUBCHAPTER A. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) proposes amendments to Subchapter A, Division 10, §354.1121, concerning Definitions, and Division 11, §354.1149, concerning Exclusions and Limitations. HHSC also proposes to amend the

title of the rule in Division 28, §354.1371, concerning Benefits and Limitations.

Background and Justification

The proposed amendments remove the prohibition against a tuberculosis (TB) institution receiving Texas Medicaid payment for inpatient services. The Texas Center for Infectious Disease (TCID), which is the only TB institution in Texas, is a public facility administered by the Texas Department of State Health Services that provides inpatient care to individuals diagnosed with TB. TCID is primarily funded through state general revenue. TCID may not receive Medicaid payment for inpatient services delivered to Medicaid clients under the current rule prohibitions and under the current Medicaid state plan. The proposed amendments would allow TCID to bill Medicaid for Medicaid-enrolled patients seeking inpatient treatment at TCID.

Section-by-Section Summary

Proposed amended §354.1121 removes the exclusion of a TB institution from the definition for "Hospital" in definition (14) and removes TB as an example of an institution that is excluded under this chapter from the definition for "Out-of-state hospital" in definition (22).

Proposed amended §354.1149, subsection (a)(1), removes the Medicaid coverage exclusion for services provided to patients of a TB institution.

Proposed amended §354.1371 makes a non-substantive modification to the title of the rule to clarify that it applies only to TB clinics.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rules are in effect, the amendment is expected to result in reductions to costs of state government. The expected savings are (\$16,136) General Revenue (GR), (\$0 All funds (AF)) in State Fiscal Year (SFY) 2016; (\$22,507) GR, (\$0 AF) in SFY 2017; (\$23,629) GR, (\$0 AF) in SFY 2018; (\$24,810) GR, (\$0 AF) in SFY 2019; and (\$26,051) GR, (\$0 AF) in SFY 2020. The amendments will have no impact to costs or revenues of local governments.

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

Small and Micro-business Impact Analysis

HHSC has also determined that there will be no effect on small businesses or micro-businesses to comply as there are no small businesses or micro-businesses affected by the proposed amendments.

Public Benefit

Kay Ghahremani, Associate Commissioner for Medicaid/CHIP, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit of enforcing the amended rules will be allowing state-administered TCID to receive Medicaid payments for persons enrolled in the Medicaid program who are receiving inpatient treatment at TCID.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Alexander Melis as follows: by fax to (512) 730-7472; by mail to P.O. Box 13247, MC H310, Austin, Texas, 78711; or by e-mail to alex.melis@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

DIVISION 10. DEFINITIONS

1 TAC §354.1121

Statutory Authority

The amendment is proposed 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.

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

§354.1121. *Definitions.*

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

(1) - (13) (No change.)

(14) Hospital--Any institution licensed as a hospital by the appropriate licensing authority but which is not [an institution for tuberculosis,] a mental institution, a health resort, nursing home, rest home, or any other institution primarily providing convalescent or custodial care or which is otherwise excluded under this chapter.

(15) - (21) (No change.)

(22) Out-of-state hospital--A hospital located outside of the State of Texas that participates as a general or acute care hospital or both under Medicare or Title XIX, or both. Examples of institutions that are excluded are institutions primarily for mental disease or[-] pulmonary care, [or tuberculosis,] a health resort, a nursing home, a rest home, or any other institution primarily providing convalescent or custodial care or that is otherwise excluded under this chapter.

(23) - (40) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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DIVISION 11. GENERAL ADMINISTRATION

1 TAC §354.1149

Statutory Authority

The amendment is proposed 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.

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

§354.1149. *Exclusions and Limitations.*

(a) Notwithstanding any other provision of this subchapter, Medicaid services or supplies that are not medically necessary will not be considered for Medicaid reimbursement. The following benefit exclusions and limitations are applicable under the Medicaid program for services provided under this subchapter. They do not apply to Medicaid services provided through the Texas Health Steps Comprehensive Care Program. Additional exclusions and limitations are listed in the Texas Medicaid Provider Procedures Manual. The following benefits are not included in the Texas Medicaid Program:

(1) services provided to any individual who is an inmate in a public institution (except as a patient in a medical institution approved for participation in the Medicaid program), or is a patient in:

[(A) an institution for tuberculosis;]

(A) [(B)] the hospital or nursing sections of facilities for persons with intellectual and developmental disabilities; or

(B) [(C)] an institution for mental disease if the patient is between the ages of 22 and 64;

(2) - (16) (No change.)

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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



DIVISION 28. TUBERCULOSIS

1 TAC §354.1371

Statutory Authority

The amendment is proposed 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.

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

§354.1371. *Tuberculosis Clinic Benefits and Limitations.*

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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TRD-201503373

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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



CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 1. MEDICAID VISION CARE PROGRAM

1 TAC §355.8001

The Texas Health and Human Services Commission (HHSC) proposes amendments to §355.8001, concerning Reimbursement for Vision Care Services.

Background and Justification

The proposed amendments correct a cross reference and make other nonsubstantive language changes.

The amendments to this rule are being proposed in order to coincide with other changes to rules in Title 1, Part 15, Chapters 354 and 363, also related to vision care.

Section-by-Section Summary

Proposed amended §355.8001, corrects the cross reference in paragraph (6)(A) of this rule and makes other nonsubstantive language changes.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rule is in effect, there will be no impact to costs or revenues of state or local governments.

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

Small and Micro-business Impact Analysis

HHSC has determined that there will be no effect on small businesses or micro-businesses to comply with the amended rule, as they will not be required to alter their current business practices as a result of the proposed amendment.

Public Benefit

Kay Ghahremani, Associate Commissioner for Medicaid/CHIP, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit will be correct and clear information provided to the public in this rule.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Amy Chandler, Rules Editor, 4900 North Lamar, Austin, Texas, 78751, Mail Code H600; or by e-mail to amy.chandler@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

No public hearing is planned related to this proposed rule amendment.

Statutory Authority

The amendments are proposed 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.

The proposed amendments affect Texas Human Resources Code Chapter 32 and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8001. *Reimbursement for Vision Care Services.*

The Texas Health and Human Services Commission (HHSC) determines and may adjust the reimbursement rate or methodologies for vision care services according to the provisions described in §355.8085 of this title (relating to [Texas Medicaid] Reimbursement Methodology for Physicians and Other Practitioners).

(1) Examination. Reimbursement for eye examinations by refraction is determined in accordance with §355.8085 of this title [(relating to Texas Medicaid Reimbursement Methodology)].

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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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



CHAPTER 363. TEXAS HEALTH STEPS
COMPREHENSIVE CARE PROGRAM
SUBCHAPTER E. EPSDT EYEGLASS
PROGRAM

1 TAC §§363.501 - 363.504

The Texas Health and Human Services Commission (HHSC) proposes amendments to §363.501, concerning Definitions; §363.502, concerning Benefits and Limitations; §363.503, concerning Specifications for Eyewear; and §363.504, concerning Claims Information Requirements.

Background and Justification

HHSC proposes to amend §§363.501, 363.502, 363.503, and 363.504 to update and simplify rule requirements related to the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Eyeglass Program. Simplifying these rules allows HHSC more flexibility in developing timely and evidence-based medical policy.

The existing rules provide detailed information on the provision of eyeglass benefits. The current level of detail requires HHSC to amend the rules to implement simple updates and changes to the Texas Medicaid medical policy. The proposed rules will align with legal requirements for the benefits and associated limitations while allowing for flexibility and enhanced timeliness in adopting future changes to medical benefits.

Section-by-Section Summary

Proposed amended §363.501 simplifies language that currently specifies which Medicaid providers may receive reimbursement for vision services and modifies specific language regarding allowable eyewear lens materials to ensure alignment with state and federal requirements. Other language changes, which are nonsubstantive, are also proposed for this rule, including added definitions for "EPSDT" and "HHSC."

Proposed amended §363.502 modifies language that currently specifies which Medicaid providers may receive reimbursement for vision services; clarifies that contact lenses may be provided without prior authorization in the case of an emergency; changes eyeglass repair eligible for reimbursement from \$2.00 to less than the cost of eyeglass replacement, based on the cost of materials; and changes eligibility for an eye exam from once every state fiscal year to once every twelve months, if there is a significant change in visual acuity, or if the exam is otherwise medically necessary. Other language changes, which are nonsubstantive, are also proposed for this rule.

Proposed amended §363.503 modifies specific language regarding allowable eyewear lens and frame materials, as well as minimum bifocal and trifocal prescriptions, to allow more flexibility in medical policy changes.

(2) Eyewear. Reimbursement for prosthetic eyewear is determined in accordance with §355.8085 of this title [~~(relating to Texas Medicaid Reimbursement Methodology)~~] and includes fitting services. Reimbursement for nonprosthetic eyewear is based on:

(A) the unit cost for each pair of eyeglasses rather than costs for components; or

(B) a fixed-unit price determined by competitive procurement, as authorized in §354.1025 of this title (relating to Competitive Procurement of Vision Care Services). If nonprosthetic eyewear is competitively procured, a dispensing fee may be paid to the dispensing provider in accordance with §355.8085 of this title [~~(relating to Texas Medicaid Reimbursement Methodology)~~].

(3) Reimbursement is limited to the type of lenses and frames described in §354.1017 of this title (relating to Specifications for Eyewear). There is no charge to the recipient for this eyewear.

(4) Optional eyewear features. If eyewear is not competitively procured, the provider may dispense eyewear with optional features that include[; but are not limited to,] special tints, coatings, and types of lenses and styles of frames selected by the recipient beyond the specifications of the Medicaid program. [~~The~~] HHSC reimburses the provider up to the allowable amount for the basic eyewear and the recipient is responsible for the cost of the optional feature(s) he selects.

(A) The recipient must sign the claim, or a patient certification, for claims the provider submits electronically[;] to acknowledge selection of eyewear or features beyond program benefits.

(B) The recipient is responsible for arranging to pay the provider for the optional feature(s) [~~with the provider~~].

(C) The provider may charge the recipient his usual price for the selected optional feature(s), but he may not charge for his professional services.

(5) Contact lenses. Reimbursement for covered contact lenses, including the handling and dispensing services provided by the supplier, is determined in accordance with §355.8085 of this title [~~(relating to Texas Medicaid Reimbursement Methodology)~~].

(6) Repairs.

(A) Repairs, as described in §354.1015 [~~§354.1015(2)(D)~~] of this title (relating to Benefits and Limitations), are reimbursed at:

(i) the provider's actual cost for supplies plus the allowable handling fee, published in the reimbursement rate schedule; or

(ii) a fixed-unit price determined by competitive procurement, as authorized in §354.1025 of this title [~~(relating to Competitive Procurement of Vision Care Services)~~].

(B) Reimbursement for repairs does not exceed the replacement cost if the damaged eyewear had been replaced rather than repaired.

(C) No reimbursement is made for repairs to eyewear that do [~~does~~] not meet the specifications in §354.1017 of this title [~~(relating to Specifications for Eyewear)~~].

(7) Eyewear materials and supplies. HHSC does not reimburse for eyewear materials or supplies, regardless of cost, that do not meet the specifications for eyewear in §354.1017 of this title [~~(relating to Specifications for Eyewear)~~].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Proposed amended §363.504 makes only nonsubstantive language changes.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rules are in effect, there will be no impact to costs or revenues of state or local governments.

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

Small and Micro-business Impact Analysis

HHSC has determined that there will be no effect on small businesses or micro-businesses to comply with the amended rules, as they will not be required to alter their business practices as a result of the amended rules.

Public Benefit

Kay Ghahremani, Associate Commissioner for Medicaid/CHIP, has determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit of the amended rules will be that Medicaid benefits related to eyewear will be clearly and consistently communicated to Medicaid recipients and other stakeholders. The public also will benefit from HHSC's ability to update policy more quickly.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Alexander Melis, Project Manager, as follows: by mail at 4900 North Lamar, Austin, Texas, 78751, Mail Code H370; by fax at (512) 730-7472; or by e-mail to alex.melis@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

No public hearing is planned related to these proposed rule amendments.

Statutory Authority

The amendments are proposed 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.

The proposed amendments affect Texas Human Resources Code Chapter 32 and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§363.501. Definitions.

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

(1) EPSDT--The federally mandated Early and Periodic Screening, Diagnosis, and Treatment program defined in 25 TAC Chapter 33 (relating to Early and Periodic Screening, Diagnosis, and Treatment).

(2) [(+) Eyeglass supplier--A person, firm, or institution that has a written agreement with HHSC [the health insuring agent] as an eyeglass supplier and is an eligible provider under the program. The fitting, adjustment, and repairs of the eyewear must be performed by an appropriate and qualified provider under Texas Medicaid [a physician, doctor of optometry, or an optician]. Suppliers accept the payments stipulated by HHSC [the department] as payment in full for the service and supplies involved, unless otherwise provided.

(3) [(2)] Eyeglasses--Lenses and frames [Eyewear], dispensed and delivered, that: are [is] medically necessary; are [is] prescribed by an appropriate and qualified provider [a doctor of optometry or a physician]; are [is] professionally determined to be necessary and appropriate for the lens, age, and sex of the recipient; and [that] significantly improve [improves] visual acuity or impede [impedes] progression of visual problems. The term eyeglasses does not include artificial eyes or any item of eyewear that is not covered under the EPSDT Eyeglass Program.

(4) HHSC--The Texas Health and Human Services Commission, a Texas Medicaid managed care organization, or another designee.

(5) [(3)] Prosthetic eyewear--Eyewear that is medically necessary and prescribed by an appropriate and qualified provider under Texas Medicaid [a doctor of optometry or physician] for post cataract surgery, congenital absence of the eye lens, or loss of an eye lens because of trauma. Prosthetic eyewear includes contact lenses and eyeglasses that meet state and federal specifications [glass or plastic lenses in frames].

(6) [(4)] Prosthetic eyewear supplier--A person, firm, or institution that has a written agreement with HHSC [the department's health insuring agent] as an eyewear supplier. The fitting, adjustment, and repair of the eyewear must be performed by an appropriate and qualified provider [a physician, a doctor of optometry, or an optician]. The eyewear supplier accepts the payment stipulated by HHSC [the department] as payment in full for the services and supplies, unless otherwise provided in this chapter.

§363.502. Benefits and Limitations.

In addition to the services specified in §354.1023 of this title (relating to Optometric Services Provider), the benefits and limitations applicable to vision services available through the Medicaid EPSDT Program are as follows.

(1) Recipient eligibility. All Medicaid recipients under the age of 21 are eligible for EPSDT vision services. Services may be continued through the month the eligible recipient becomes 21.

(2) Provider eligibility. All vision services reimbursable by the program must be provided to eligible recipients by an appropriate provider who is [a physician, optometrist, or optician] enrolled in the Medicaid Program at the time the service is provided.

(3) Reimbursable services.

(A) Examination. One examination of the eyes by refraction may be provided to each eligible recipient; [each state fiscal year (September 1–August 31):]

(i) once every twelve months;

(ii) if there is a significant change in visual acuity measured in diopter or axis changes, as defined by HHSC; or

(iii) if the exam is otherwise medically necessary.

(B) Eyewear. Eyewear that is medically necessary to correct vision defects may be provided to an eligible recipient. Eyewear includes [include] eyeglasses (lenses and frames), contact lenses, and post cataract surgery prosthetic lenses.

(i) Nonprosthetic eyeglasses or contact lenses are available to an eligible recipient only once every 24 months, unless the recipient's visual acuity has changed in diopters or axis as defined by HHSC [the Commission or its designee,] or the eyewear is lost or destroyed. Except in an emergency, HHSC [The Texas Health and Human Services Commission or its designee] must authorize in writing prescriptions for contact lenses before dispensing. Prior authorization is based on the provider's written documentation that contact lenses are the only means of correcting the vision defect.

(ii) Prosthetic eyewear is provided to an eligible recipient if prescribed for post cataract surgery, congenital absence of the eye lens, or loss of an eye lens because of trauma.

(I) Reimbursement is made for as many temporary lenses as are medically necessary during post cataract surgery convalescence (four months after the date of surgery).

(II) Only one pair of permanent prosthetic eyewear may be dispensed except to replace lost or destroyed prosthetic eyewear or if required because of a change in visual acuity measured in diopter or axis changes as defined by HHSC [the Commission or its designee].

(C) Repairs. Eyeglasses repair is [Eyeglass repairs are] reimbursable if the cost of materials does not exceed the cost of replacement of the eyeglasses [exceeds \$2.00]. Repairs costing less than \$2.00 are not reimbursable, and the provider may not bill the recipient for these repairs.

(D) Replacement of lost or destroyed eyewear. Replacement of eyewear is reimbursable. The date nonprosthetic eyewear is replaced begins a new 24-month ineligibility period for new eyewear unless the conditions in subparagraph (B)(i) of this paragraph apply.

(E) Limitations. Eyeglasses and contacts, for residents of institutions that include these services [this service] in their vendor payment, are not reimbursed under this program.

§363.503. Specifications for Eyewear.

The provider must ensure that eyewear provided through this program meets the following specifications.

(1) [Lenses are clear glass, plastic, or polycarbonate, as prescribed by the vision professional.] Lenses must meet federal and state specifications and all standards of the American standard prescription requirements for first quality [glass, plastic, or polycarbonate] lenses and dress eyewear.

{(2) Frames are zylonite, metal, or combination metal/zylonite.}

(2) [(3)] Standard sizes of frames for individuals ages 6 months to 21 years are dispensed at no cost to the eligible recipient.

(3) An eyeglass supplier must show the recipient a minimum selection of frame styles and colors as required by HHSC policy [choice of six styles of frames (at least one style of each type of frame material) appropriate for male or female, in a choice of three colors for each frame style].

(4) Frames are manufactured in the United States of America, unless foreign-made frames are comparable in quality and less expensive than American-made frames.

(5) Frames are serviceable and meet prescription quality standards.

(6) Lens and frame materials are new.

{(7) Bifocal lenses are a minimum kryptoe or 22 MM flat top lens or equivalent.}

{(8) Trifocal lenses are a minimum flat top 7%6125 lens or equivalent.}

(7) [(9)] Supplies are at least equivalent in quality to program eyeglasses provided under this category at no cost to the eligible recipient.

(8) [(40)] Repair materials, if claimed for reimbursement, are new, are at least equivalent to the original item, and meet the specifications for eyewear cited in these provisions.

§363.504. Claims Information Requirements.

Providers must meet the criteria established in this subchapter for vision services and the provisions for participation in the Medicaid Program established under Chapter 354, Subchapter A, Division 1, of this title (relating to Medicaid Procedures for Providers), and Chapter 354, Subchapter A, Division 11, of this title (relating to General Administration). In addition to [Besides] the claims information requirements established in §354.1001 of this title (relating to Claim Information Requirements), the following information is required for claims for vision services:

(1) name, address, and Medicaid provider identification number of the ordering provider, as appropriate;

(2) description of lenses and frames provided;

(3) provider's signature on the claim verifying the diopter change required for the dispensing of eyeglasses;

(4) certification by the provider that the dispensed materials used for repairs meet the specifications for eyewear in §363.503 of this subchapter [title] (relating to Specifications for Eyewear);

(5) claims for eyewear with special features, signed by the recipient, acknowledging selection of eyewear that is beyond the specifications for eyewear in §363.503 of this subchapter [title (relating to Specifications for Eyewear)]. A signed patient certification satisfies this requirement for claims the provider submitted electronically;

(6) a copy of the invoice for supplies dispensed, attached to a claim for repairs or kept the provider, as authorized by HHSC [the department or its designee];

(7) if the claim is for replacement of prosthetic eyewear or of nonprosthetic eyewear when the records of HHSC [or its designee] show that less than 24 months have elapsed since the date of the original nonprosthetic eyewear service, then:

(A) submission of a statement justifying the need for the replacement eyewear (reimbursement is made only if the eyewear was lost or damaged beyond repair or if the recipient's visual acuity has changed significantly, as specified in §363.502(3)(B)(i) or (ii)(II) of this subchapter [title] (relating to Benefits and Limitations)). If the original

eyewear has been lost or damaged beyond repair, the recipient must sign the claim form or a patient certification if the provider submits claims electronically; and

(B) claim form signed by the recipient if the original eyewear was lost or damaged beyond repair.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 24, 2015.

TRD-201503376

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: October 4, 2015

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



TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 3. STATE BANK REGULATION SUBCHAPTER B. GENERAL

7 TAC §3.36, §3.37

The Finance Commission of Texas (commission), on behalf of the Texas Department of Banking (the department), proposes to amend §3.36, concerning annual assessments and specialty examination fees, and §3.37, concerning the calculation of annual assessment for banks. Amendments to §3.36 would revise the section to conform to proposed changes in §3.37 concerning the manner in which assessments applicable to state banks are calculated. Amendments proposed to §3.37 will increase the amount of each bank's annual assessment to offset increased operational costs of the department, beginning with the quarterly installment due in March 2016. In addition, assessment rates are proposed to be adjusted for inflation beginning in September 2017.

The current assessment system for state banks, set forth in §3.36 and §3.37, determines how much each state bank must pay for supervision by the department. This system has advantages for both the department and state banks, in that it allows banks to calculate and accrue for the amounts due to the department in support of its supervisory functions; provides an equitable structure by which banks pay for the costs of supervision; allows the department to more accurately predict and manage its cash flows; allows the department to more adequately provide for and schedule necessary staff training; and avoids the inordinate accumulation of excess funds.

Section 3.36 provides that each bank's assessment is calculated annually effective September 1 of each year and is paid to the department by electronic payment/ACH transfer in quarterly installments to be debited effective September 15, December 15, March 15, and June 15 of each year, or by other means if directed by the department. Section 3.37 provides a table that specifies calculations and rates for assessment fees and sets out the steps for calculating a bank's annual assessment as described in §3.36. As reflected in the table, a state bank's as-

essment is currently calculated on the basis of its assessable assets using two factors: the base assessment amount and the marginal assessment rate applicable to the bank's assessable asset group. In addition, the department levies a surcharge on a bank that requires increased supervisory resources, currently reflected by the bank's assigned examination frequency.

The proposed increase in bank assessments will support bank supervision functions and will not subsidize other regulatory responsibilities of the department. The increased revenue will permit the department to uphold the professional standards that the Texas banking industry deserves and has come to expect by providing its examiners the tools and training needed to effectively regulate an increasingly complex banking industry for the foreseeable future. Further, the Department possesses bilateral authority in regulatory matters under its cooperative bank examination agreements with the Federal Deposit Insurance Corporation and with the Federal Reserve Bank of Dallas. Retaining this stature requires the Department to maintain staff and processes that equal or exceed federal standards. The department has a solid history of fiscal responsibility and will continue to carefully and prudently evaluate the amount of funds needed to fulfill the department's statutory responsibilities.

Proposed Amendments

Proposed §3.37(a) will increase the marginal assessment rates by 12 percent for assessable asset groups 1 - 9, and by 14.75 percent for assessable asset groups 10 - 14 (assessable assets in excess of \$10 billion). The base assessment amounts will also increase as a result because each base assessment amount is the sum of the assessments applicable to all lower-tier assessable asset groups. In addition, the factor determining whether a surcharge is to be applied is proposed to change from a bank's assigned examination frequency to a bank's CAMELS composite rating as determined at the bank's most recent examination. The CAMELS score is a numerical rating assigned by supervisors to reflect their assessment of the overall financial condition of a bank and in fact is a major determinant of examination frequency. The score ranges from 1 (low risk) to 5 (high risk). As proposed, a CAMELS composite rating of 1 or 2 will generate an assessment multiplier of 1.0, meaning there is no additional surcharge. A CAMELS composite rating of 3, 4 or 5 will generate an assessment multiplier of 2.0, meaning a surcharge equal to the calculated assessment is applied, and the total billable annual assessment would be double that applicable to a similar-sized bank with a CAMELS composite rating of 1 or 2. Finally, a bank with assessable assets of \$500 million or less and a CAMELS composite rating of 1 or 2 will apply a multiplier of 0.875.

To eliminate the need for a large, one-time increase in annual assessments, as has occurred in the past, proposed §3.37(b) would automatically escalate marginal assessment rates annually based on the percentage change in an inflation index, beginning September 1, 2017. The proposed inflation index is the Gross Domestic Product Implicit Price Deflator (GDIPI), published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. Effective each September 1, the marginal assessment rates (and the derivative base assessment amounts) set forth in proposed §3.37(a) will be revised upward (or downward) by an amount equal to the percentage change in the GDIPI index values from the first quarter value of the previous calendar year to the first quarter value of the current calendar year (the previous March-to-March period). While the Consumer Price Index (CPI) published by the Bureau of Labor Statistics, United States Department of Labor, is the

most well-known inflation measure, it measures only the prices of goods and services typically purchased by urban consumers. These goods and services constitute only about 60 percent of the economy's total production. In contrast, the GDPIPD captures the overall level of inflation in everything that an economy produces and is typically used to calculate inflation at the corporate or governmental level. The Office of the Comptroller of the Currency, which regulates national banks, also indexes its marginal assessment rates to reflect inflation as measured by the GDPIPD for the previous June-to-June period.

While an increase in the GDPIPD will automatically increase marginal assessment rates, it will not necessarily result in a proportionate increase in annual assessments. As provided by §3.36(g), the department anticipates that it may periodically forgive a portion of assessments otherwise due in a year when the additional funds are not needed to fund the department's operations, specifically with respect to bank and trust supervision. Historically, the department has discounted or forgiven a portion of a state bank's annual assessment when the forgiven revenue was not needed to cover the department's regular operations, as authorized by §3.36(g). In fiscal years 1995, 1997 and 2001, the department reduced the billable annual assessment by 15.0 percent, 11.1 percent, and 19.2 percent, respectively. In 2005, 2007, 2008, 2009, and 2011, the department reduced the billable annual assessment by 22.3 percent, 10.1 percent, 12.6 percent, 19.3 percent, and 10.0 percent, respectively.

Proposed §3.36 is amended primarily to conform to and be consistent with proposed changes in §3.37(a). In proposed §3.36(a), the definition of "examination frequency" is proposed to be deleted and a new definition for "CAMELS composite rating" inserted. Proposed §3.36(d)(4) will modify the annual calculation requirement solely with respect to the fiscal year beginning September 1, 2015, to require the last two quarterly installments of the fiscal year to be based on the new assessment rates. Finally, the proposed amendment to §3.36(f)(1) is a nonsubstantive conforming change.

Increased Costs of Supervision

State bank assessment rates were last changed in September 2003. Since that time, the department's expenses relating to bank and trust supervision have increased 68.3 percent (from \$10.6 million to \$20 million). During the same period, the number of state banks has decreased from 330 to 260 and on-book assets of state banks have increased from \$67.8 billion to \$242.4 billion.

While the growth in assets contributed increased revenue, industry consolidation and the declining number of state banks has negatively affected revenue. Marginal assessment rates used to compute assessments decrease as asset size increases. This regressive structure appropriately reflects the core, fixed cost of supervision applicable to every bank and the lesser, marginal costs of supervision that are incurred as the bank grows in size. However, all things being equal, merger or consolidation of state banks will result in a decline in assessment revenue. Two banks, each with \$100 million in assets, will generate significantly more assessment revenue annually under both the current structure and the proposed structure (\$58,740 and \$65,790, respectively) than one bank with \$200 million in assets (\$40,370 and \$45,215, respectively).

The department has not experienced a corresponding decline in costs of supervision, in part because of the increasing size and complexity of state bank operations. The department has been

required to hire and retain even more highly qualified and experienced examiners to fulfill the agency's statutory responsibilities.

The increase in all supervisory costs is directly related to increasing complexity in the industry, reflected both in more sophisticated and nuanced financial products and services, and in the more extensive and complex federal law and regulations that followed. In order for the department to uphold its professional standards, a high level of experience and education for supervisory staff is required, which in turn requires more competitive salaries at all levels in order to maintain a viable career path for examiners. Specialists are now required to aid the department in maintaining its high regulatory standards. Information technology specialists are necessary to understand cyber risks and assist banks in maintaining systems that protect customer information and prevent loss of bank assets. Capital market specialists are needed to understand complex derivative based instruments, interest rate risk, foreign exchange transactions, liquidity planning, and risk based capital adequacy analysis. Bank Secrecy Act specialists are needed to monitor institutional standards aimed at preventing money laundering and terrorist financing.

Because of the continuous monitoring programs that are necessary for effective supervision of state banks with over \$10 billion in assets, large bank specialists are also needed to develop and understand model risk management, syndicated national credit underwriting, specialty lending related to specific industries, and new technologies that are not yet in common use among smaller banks. In addition to the currently proposed one-time increase in marginal assessment rates of 12 percent, the largest state banks will also incur an additional 2.75 percent increase in the marginal assessment rates applicable to assessable assets in excess of \$10 billion. This additional revenue is necessary to adequately fund the assignment of the department's most experienced and senior staff to large bank supervision and to ameliorate the fiscal impact to state banks classified as small businesses.

In addition, training and travel costs continue to rise. In fiscal year 2004, the total training cost for the bank and trust division was \$65,082. In 2015, training costs are projected to be approximately \$173,190. Travel costs related to supervision (lodging and per diem) have also more than doubled, from \$823,341 in 2004 to \$1,695,759 in 2015.

Finally, the 2015 84th Legislature addressed the state's chronically underfunded pension system by increasing state employee contribution rates effective September 1, 2015. The Legislature also provided current state employees with a 2.5 percent pay raise to offset the employees' increase in required contributions, also effective September 1, 2015. The department estimates that its annual personnel costs will increase by approximately \$880,000, about 85 percent of which relates to bank supervision and must be funded through bank assessments.

Analysis of Fiscal Impact and Public Benefits

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period that the proposed rules are in effect, there will be fiscal implications for state government (but not for local government) as a result of enforcing or administering the rules. The increased fee revenue is required to offset the department's projected budget deficit for fiscal year 2016 (September 2015 through August 2016) and subsequent fiscal years. Assuming a stable number of state banks with a stable level of assessable assets, annual inflation of 1.66 percent (based on the average percentage change in the

GDPIPD index for the last five years) applied annually after the first year, and collection of 100% of assessments, Mr. Bacon estimates that, for each year of the first five years the amended sections as proposed will be in effect, the increased assessment fees will generate additional revenue of \$2,519,890 in year 1, \$2,898,035 in year 2, \$3,283,710 in year 4, \$3,681,080 in year 4, and \$4,086,360 in year 5.

The five-year revenue estimate is required by Government Code, §2001.024(a)(4), but is more understandable in the present context if presented by fiscal year (September-August). Assuming an effective date on or before March 1, 2016 (mid-fiscal year 2016), Mr. Bacon estimates that the increased assessment fees will generate additional revenue in fiscal years 2016 - 2021 as follows:

Figure: 7 TAC Chapter 3--Preamble 1

Mr. Bacon also has determined that for each year of the first five-year period that the amended sections as proposed will be in effect, the public benefit anticipated as a result of the amendments will be better matching of the actual cost of regulation with the service provided, for the purpose of achieving economic self-sufficiency for bank supervision functions within the department.

For each year of the first five years that the amended sections will be in effect, there will be economic costs to persons required to comply with the amended sections. There will be an adverse economic effect on small businesses and micro-businesses, although the proposal has been modified to reduce the effect. There will be differences in the cost of compliance for small businesses as compared to large businesses.

Of 260 state banks subject to the sections as proposed, 197 (76 percent) are small businesses as defined in Government Code, §2006.001(2), and 66 of these small businesses (25 percent of all state banks) are also micro-businesses as defined in Government Code, §2006.001(1). While the probable cost of compliance for large businesses exceeds that for small businesses if measured in absolute dollars (\$4,200 and \$27,700, respectively, in year 1), the cost to large businesses is lower than the cost to small businesses if expressed as cost per million dollars of bank assets. The department estimates that, for each year of the first five years that the amended sections will be in effect, the probable cost of compliance with the sections as proposed for the average small business compared to the average large business, expressed in cost per million dollars of bank assets, is approximately as follows:

Figure: 7 TAC Chapter 3--Preamble 2

The cost per million dollars in assets for large business may be misleading because of the wide range in asset size of those banks. For each year of the first five years that the amended sections will be in effect, the probable cost of compliance with the sections as proposed for the average bank with under \$10 billion in assets compared to the average bank with over \$10 billion in assets, expressed in cost per million dollars of bank assets, is approximately as follows:

Figure: 7 TAC Chapter 3--Preamble 3

Government Code, §2006.002, requires a state agency considering adoption of a rule that would have an adverse economic effect on small businesses to reduce that effect if doing so is legal and feasible considering the purpose of the statute under which the rule is to be adopted. The purpose of Finance Code, §31.106, is to ensure that each state bank pays fees to fund

the cost of examination; the equitable or proportionate cost of maintenance and operation of the department; and the cost of enforcement of Finance Code, Title 3, Subtitle A, known as the Texas Banking Act. Pursuant to Finance Code, §16.003, the department is charged with responsibility for all direct and indirect costs of its existence and operation and may not directly or indirectly cause the general revenue fund to incur any of such costs.

Within those constraints, the adverse economic effect of the proposed fee increase on small businesses has been reduced slightly by shifting a proportion of the fee increase from small businesses to the largest state banks, in the form of a larger increase in the proposed marginal assessment rates applicable to assets in excess of \$10 billion. The five state banks with assets over \$10 billion would on average experience a 13.1 percent increase in the maximum annual assessment based on this allocation shift, compared to the 12.0 percent increase for banks with assets under \$10 billion. In light of the purpose of Finance Code, §31.106, a further reduction in adverse economic impact on small businesses is not feasible. Further, Government Code, §2006.002(c-1), provides that an agency is required to consider alternative regulatory methods only if the alternative methods would be consistent with the health, safety, and environmental and economic welfare of the state. The department has developed the proposed amendments in accordance with the standards set forth in Finance Code, §16.003 and §31.106. Consequently, any variance from these standards would not be consistent with the health, safety, and environmental and economic welfare of the state, and no other alternative regulatory methods have been considered.

Comment Requested

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on October 5, 2015. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

Authority

The amendments are proposed pursuant to Finance Code, §31.003(a)(4) and §31.106, which authorize the commission to adopt rules necessary or reasonable to recover the cost of supervision and regulation by imposing and collecting ratable and equitable fees. As required by Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive position of state banks with regard to national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development in this state.

Finance Code, §31.106, is affected by the proposed amendments.

§3.36. *Annual Assessments and Specialty Examination Fees.*

(a) (No change.)

(b) Definitions. The following words and terms, when used in this section, §3.37 of this title (relating to Calculation of Annual Assessment for Banks), or §3.38 of this title (relating to Calculation of Annual Assessment for Foreign Bank Branches and Agencies), shall have the following meanings, unless the context clearly indicates otherwise.

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

(4) CAMELS composite rating--A bank's composite rating under the Uniform Financial Institutions Rating System (UFIRS), as described more fully in Supervisory Memorandum 1001, assigned by the department to a state bank in connection with its most recent examination by the department or by a federal bank regulatory agency [Examination frequency--The designated frequency of examination by the department of a bank, foreign bank branch, or foreign bank agency under Finance Code, §31.105 or §204.003, and Commissioner Policy Memorandum Number 1003].

(5) - (6) (No change.)

(c) (No change.)

(d) Annual assessment. Effective September 1 of each year, the department will establish the annual assessment for each bank, foreign bank branch, and foreign bank agency under subsections (f) and (g) of this section.

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

(4) Notwithstanding paragraph (1) of this subsection, the annual assessment established for the fiscal year beginning September 1, 2015, must be recalculated for each bank on March 1, 2016, using the revised table in §3.37(a). The two remaining quarterly installments due on or before March 15 and June 15, 2016, must be based on the recalculated assessment. In other words, subject to possible reduction under Subsection (g) of this section, the quarterly installments due on or before March 15 and June 15, 2016, will each be in an amount equal to 25 percent of the assessment as recalculated on March 1, 2016.

(e) (No change.)

(f) Interim adjustments.

(1) If the size, condition, or other characteristics of a bank, foreign bank branch or foreign bank agency change sufficiently during a year to cause the institution to fall into a different assessable asset group or to be subject to a new or different surcharge based on a change in the institution's CAMELS composite rating [category of examination frequency], the department will adjust the annual assessment to the appropriate amount beginning with the first billed quarterly installment after the change [in examination frequency].

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

(g) - (i) (No change.)

§3.37. *Calculation of Annual Assessment for Banks.*

(a) Bank assessment calculation table. The annual assessment for a state bank is calculated as described in this section and paid as provided by §3.36 of this title (relating to Annual Assessments and Specialty Examination Fees), based on the values in the following table, as such values may be periodically adjusted in the manner provided by Subsection (b) of this section. The unadjusted values in the following table are effective until September 1, 2017:

Figure: 7 TAC §3.37(a)
[Figure: 7 TAC §3.37]

(b) Required adjustments for inflation. In this section, "GDPIPD" means the Gross Domestic Product Implicit Price Deflator, published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. The "annual GDPIPD factor" is equal to the percentage change in the GDPIPD index values published for the first quarter of the current year compared to the first quarter of the previous year (the March-to-March period immediately preceding the calculation date), rounded to a hundredth of a percent (two decimal places).

(1) Beginning September 1, 2017, and each September 1 thereafter, the table in subsection (a) of this section, as most recently

revised before such date pursuant to this subsection, is revised as follows:

(A) Each marginal assessment factor listed in Step 3 of the table is increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDIPD factor, rounded to six decimal places;

(B) the base assessment amount listed in Step 4 for assessable asset group 1 is increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDIPD factor, rounded to whole dollars; and

(C) each base assessment amount listed in Step 4 for assessable asset groups 2 through 14 is adjusted to an amount equal to the maximum annual assessment possible for the next lower assessable asset group (without surcharge), rounded to whole dollars. For example, the base assessment amount for assessable asset group 2 is equal to the annual assessment (without surcharge) calculated under assessable asset group 1 for a bank with exactly \$10 million in assessable assets.

(2) Not later than August 1 of each year, the department shall calculate and prepare a revised table reflecting the inflation-adjusted values to be applied effective the following September 1, and shall provide each state bank with notice of and access to the revised table. At least once every four years, the department shall propose amendments to this section for the purpose of substituting a current revised table in subsection (a) of this section, and for such other purposes as may be appropriate.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2015.

TRD-201503300

Catherine Reyer

General Counsel

Finance Commission of Texas

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 475-1301



CHAPTER 6. BANKING DEVELOPMENT DISTRICTS

7 TAC §§6.1 - 6.6

The Finance Commission of Texas (the commission) proposes new Chapter 6, concerning banking development districts, comprised of new §§6.1 - 6.6. The new rules are proposed to implement a banking development district program pursuant to Finance Code, Chapter 279.

The Texas Legislature recently passed H.B. 1626, which added new Chapter 279 to the Finance Code effective September 1, 2015 (see Acts 2015, 84th Legislature, R.S., Chapter 967, §1). Chapter 279 requires the commission and the Texas Credit Union Commission to administer and monitor a banking development district program and a credit union development district program, respectively, to encourage the establishment of branches of financial institutions or credit unions in areas where there is a demonstrated need for such financial services. The chapter authorizes a local government to apply for the designation of a banking or credit union development district and authorizes a financial institution or credit union to apply to

open a branch in a proposed development district at the time the local government submits the application.

Chapter 279 further authorizes the governing body of a local government in which a banking or credit union development district has been established to designate a financial institution or credit union located in the district as a banking district depository or credit union district depository, as applicable. The bill authorizes a local government to deposit public funds with a financial institution or credit union designated as a district depository. The chapter also authorizes the comptroller of public accounts to deposit public funds with a district depository if the comptroller designates the financial institution or credit union as a state depository.

Finance Code, §279.052, requires the commission, in consultation with the Texas Economic Development and Tourism Office (within the Office of the Governor) to adopt rules regarding the criteria for the designation of banking development districts. (Finance Code, §279.102, imposes the same requirement on the Texas Credit Union Commission.) Section 2 of H.B. 1626 requires the commission to initially adopt these rules not later than January 1, 2016.

As proposed, §6.1 states the purpose of the chapter and clarifies that establishing a banking development district does not affect requirements applicable to reinvestment zones and tax abatement agreements pursuant to the Tax Increment Financing Act or the Property Redevelopment and Tax Abatement Act (Government Code, Chapters 311 and 312, respectively). Proposed §6.2 provides definitions applicable to the chapter. Definitions in the statute are repeated for ease of use, except that the definitions of "financial institution" and "credit union" are modified slightly to clarify that an eligible depository must be federally insured.

Content requirements for an application are set forth in proposed §6.3, and proposed §6.4 sets out how an application will be processed.

Proposed §6.5 sets out the criteria for the designation of a banking development district, consisting of the five, statutorily required factors from Finance Code, §279.052(b), and two proposed additional factors. The two additional factors are the physical size and cohesiveness of the proposed district, and the history of a lack of banking services in the proposed district.

Finally, §6.6 as proposed would impose minimal reporting requirements on the local government applicant in order to permit the commission to "monitor" the program as required by Finance Code, §279.051. The only required notice would inform the commission when a financial institution opens or closes a branch in an approved banking development district.

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

Mr. Bacon also has determined on behalf of the commission that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is a clearly defined process for a local government that seeks to designate a specified portion of its jurisdiction as a banking development district.

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

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

To be considered, comments on the proposed new sections must be submitted no later than 5:00 p.m. on Monday, October 5, 2015. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The new rules are proposed under Finance Code, §279.052(a), which requires the commission to adopt rules to implement Subchapters B and D of Chapter 279 with respect to financial institutions in banking development districts. As required by Finance Code, §279.052(b), the commission is consulting with the Texas Economic Development and Tourism Office regarding the criteria for the designation of banking development districts, and a copy of this proposal has been submitted to that office for further comment.

Finance Code, §§279.051 - 279.055 and §§279.151 - 279.153, is affected by the proposed new sections.

§6.1. Purpose; Scope.

(a) This chapter implements Finance Code, Chapter 279, by providing application requirements for a municipality or county that seeks to establish a banking development district in conjunction with a financial institution.

(b) This chapter does not affect or circumvent:

(1) requirements under the Tax Increment Financing Act or the Property Redevelopment and Tax Abatement Act (Government Code, Chapters 311 and 312, respectively), including requirements for designation of an area as a municipal or county reinvestment zone or for authorization to enter into a tax abatement agreement; or

(2) any required regulatory approval for a financial institution that seeks to establish a branch in a banking development district.

§6.2. Definitions.

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

(1) "Alternative providers" means check cashers, licensed money transmitters, licensed lenders, and licensed residential mortgage lenders.

(2) "Banking services" include deposit taking, check-cashing, and origination of residential mortgages, commercial mortgages, or other secured or unsecured consumer or commercial loans.

(3) "Branch" means a full-service main office or branch office of a financial institution or credit union.

(4) "Commission" means the Finance Commission of Texas.

(5) "Credit union" means a federally insured state or federal credit union.

(6) "Department" means the Texas Department of Banking.

(7) "District" means a banking development district under this chapter.

(8) "Financial institution" means a federally insured state or national bank, a state or federal savings bank, or a state or federal savings and loan association.

(9) "Local government" means a municipality or county.

§6.3. Application Requirements.

(a) Basic application. A local government, in conjunction with a financial institution, may submit an application to the commission for the designation of a proposed banking development district, as provided by §6.4 of this title (relating to Submission and Processing of Application). The application must include the following information to the extent available:

(1) identification of the local government applicant and evidence of the approval of the application by its governing body;

(2) identification of the participating financial institution by type and name, and identification of its primary state and/or federal regulator;

(3) a description of the geographic area comprising the proposed district, including a map that identifies the borders of the proposed district;

(4) a compilation and explanation of the population demographics included within the proposed district, including the number of residents and the percentage of the population that can be described as comprised of, for example, elderly (age 64 and over), disabled, non-English speaking, and identifiable racial, ethnic or other minorities;

(5) a compilation and explanation of economic indicators pertinent to the proposed district, to the extent available, including per capita annual income, median household annual income, unemployment data, percentage of the population at or below the poverty level, and percentage of the population receiving public assistance within the proposed district;

(6) a description of the type and nature of commercial businesses located in the proposed district, including the number and percentage of which constitute small business, as that term is defined by Government Code §2006.001(2);

(7) a compilation and summary of significant business developments within the past three years, including corporate restructurings, plant closings, other business closings, and recent or proposed business openings or expansions;

(8) the location, number, and proximity of sites where banking services are available in or near the proposed district, including branches of financial institutions and credit unions, and deposit-taking ATMs other than those located at branches;

(9) a compilation and description of alternate providers in the proposed district;

(10) a description of the anticipated impact that additional banking services would have on potential economic development within the proposed district.

(b) Optional information. An application for designation of a banking development district may also include:

(1) a description of other local government and community initiatives proposed to be undertaken and coordinated with establishment of the proposed district;

(2) indications of community support or opposition for the application, as evidenced by letters from entities such as local chambers of commerce, local businesses, community-based organizations, non-profit organizations, government officials, or community residents; and

(3) such other information that the applicant believes will demonstrate that the proposed district meets the standards set forth in §6.5 of this title of this title (relating to Criteria for Approval).

§6.4. Submission and Processing of Application.

(a) The application must be submitted to the commission in care of the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705. No filing fee is required.

(b) On or before the 15th day after initial submission of an application, the department shall issue a written notice informing the applicant either that the application is complete and accepted for filing, or that the application is deficient and specific additional information is required. The applicant must supply any additional information requested by the department on or before the 61st day after the date of initial submission of the filing. Upon a finding of good and sufficient cause, the department shall grant an applicant additional time to complete the application. Extensions will be communicated to the applicant before the expiration of the filing period.

(c) After the issuance of written notice informing the applicant that the application is complete and accepted for filing, the department shall evaluate the application to the extent necessary to make a written recommendation to the commission under the criteria set forth in §6.5 of this title. The department shall submit the completed application and the department's recommendation to the commission for decision at the next regularly scheduled meeting of the commission, which must be on or before the 120th day after the date the completed application is accepted for filing.

(d) If the finance commission approves the application, the department shall notify the interested parties as required by Finance Code, §279.055(b).

§6.5. Criteria for Approval.

In determining whether to approve an application for the designation of a banking development district, the commission shall take into consideration the following criteria:

(1) the location, number, and proximity of sites where banking services are available in the proposed district;

(2) consumer needs for banking services in the proposed district;

(3) the economic viability and local credit needs of the community in the proposed district;

(4) the existing commercial development in the proposed district;

(5) the impact additional banking services would have on potential economic development in the proposed district;

(6) the physical size and cohesiveness of the proposed district; and

(7) the history of the availability of banking services in the proposed district.

§6.6. Monitoring.

(a) A local government that receives approval for a district under this chapter shall notify the department in writing on or before the 21st day after the date:

(1) the financial institution opens a branch in the district and the address of the branch; and

(2) the financial institution closes a branch in the district.

(b) On behalf of the commission, the department may request periodic status reports from the local government in order to ensure that the needs of the community located in the district are being met in an appropriate manner.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Catherine Reyer

General Counsel

Finance Commission of Texas

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For further information, please call: (512) 475-1301



PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §33.4

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes new §33.4, concerning payment processors. The new rule is proposed to exclude from money services business (MSB) licensure two types of payment processor that might otherwise be required to obtain money transmission licenses under Finance Code Chapter 151. The new rule will clarify regulatory requirements and allow the department to more efficiently enforce the Texas Money Services Act (Act).

Finance Code §151.003(10) authorizes the commission to adopt rules that exclude from licensing any person, transaction, or class of persons or transactions on a finding that licensing the person or transaction is not necessary to achieve the purposes of the Act. The purposes of the Act, as expressed in Finance Code §151.102, are to preserve and protect the safety and soundness of MSBs, to protect the interests of purchasers of money services, and to protect against money laundering and similar financial crimes. The department has found that regulation of the payment processors described in the new rule is not necessary achieve these aims.

New §33.4 expands and clarifies two exclusions that already exist under Texas law. First, Finance Code §151.003(7) excludes a person acting as an intermediary on behalf of a license holder to assist in transmitting funds after they are received by the license holder. The rationale behind this exclusion is that because regulation of the license holder is designed to achieve the goals of the Act with respect to the entire transaction, additional regulation of any intermediaries is unnecessary. New §33.4(c) extends this reasoning to payment processors acting on behalf of a non-license-holder that has been excluded or exempted from licensing. The rationale behind this provision is that the reasons a person selling money services does not need a license- for example, because the person is a bank and is therefore already heavily regulated- extend to any intermediaries acting on that person's behalf.

Second, as expressed in the department's Legal Opinion 14-01, a payment processor who is appointed in a written contract as a merchant's agent to receive payments is not conducting money transmission. That is because under the common law doctrine of agency, payment to the merchant is complete upon receipt

of funds by the agent. New §33.4(d) expands the application of Legal Opinion 14-01 to some situations where there is no explicit agency appointment in a contract. Provided that the requirements of new §33.4(d) are met, under Texas common law the processor is an agent of the merchant even absent an express contractual appointment. Consequently, under those circumstances neither the payment processor nor the merchant is conducting money transmission. Essentially then, new §33.4(d) merely codifies existing Texas law.

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

Ms. Newberg also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is greater clarity for how regulated entities can comply with the requirements of Finance Code Chapter 151.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed. The rule creates no new regulatory requirements, and creates no new licensable activity.

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

To be considered, comments on the proposed new rule must be submitted no later than 5:00 p.m. on October 4, 2015. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The new rule is proposed under Finance Code, §151.102, which authorizes the commission to adopt rules to administer and enforce Chapter 151, and under Finance Code §151.003(10) which authorizes the commission to adopt rules that exclude from licensing a person, transaction, or a class of persons or transactions.

Finance Code, §151.003 and §151.302 are affected by the proposed new section.

§33.4. Payment Processors.

(a) Policy. The Texas Department of Banking (Department) is committed to carrying out its legislative mandate under Finance Code Chapter 151 with respect to money services businesses (MSBs) while minimizing the regulatory burden where possible. Specifically, the Legislature has charged the Department with the following threefold mandate: to preserve and protect the safety and soundness of MSBs; to protect the interests of purchasers of money services and the public; and to protect against drug trafficking, terrorist funding, and money laundering or related financial crimes. But when issuing a license is not required to achieve this mandate, the Legislature has also authorized the Finance Commission to adopt rules that exclude from licensure any person, transaction, or class of persons or transactions that might otherwise require a license under Chapter 151. Because the nature of the transactions involved presents low risk to purchasers of money services, low risk of money laundering or related financial crimes, and low risk to the safety and soundness of MSBs, the Department has found that requiring certain classes of payment processors to obtain money transmission licenses is not necessary to achieve the goals of its mandate under Chapter 151.

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

(1) "Payment processor" means a person employed, directly or indirectly, by one of the parties to a transaction to handle the funds involved in order to complete the transaction.

(2) "Consumer-facing entity" means a person who interacts with a consumer in order to sell or offer the person's goods or services.

(3) "Funds" means money or monetary value as defined by Finance Code §151.301(b)(3).

(c) Downstream Payment Processors. A payment processor that acts as an intermediary between a consumer-facing entity that has incurred an outstanding money transmission obligation to a consumer, and the consumer's designated recipient, does not need a license under Finance Code Chapter 151, provided that the consumer-facing entity:

(1) is properly licensed, excluded under Finance Code §151.003, or has been granted an exemption under Finance Code §151.302(c);

(2) provides a receipt to the consumer identifying the consumer-facing entity as the provider of money services in the transaction; and

(3) bears sole responsibility to satisfy the outstanding obligation to the consumer, including the obligation to make the consumer whole in connection with any failure to transmit the funds.

(d) Point of Sale Payment Processors. A payment processor that receives funds from a consumer on behalf of a consumer-facing entity selling goods or services other than money services does not need a license under Chapter 151, provided that:

(1) the consumer-facing entity, upon receipt of funds by the payment processor, immediately either:

(A) provides the purchased goods and services; or

(B) credits the consumer for the full amount of the funds received by the payment processor, which credit is not revocable by the consumer-facing entity, and evidences this credit in writing; and

(2) the consumer-facing entity is obligated to provide the purchased goods and services regardless of whether the payment processor transmits the funds.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Catherine Reyer

General Counsel

Texas Department of Banking

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For further information, please call: (512) 475-1301



PART 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 80. TEXAS RESIDENTIAL MORTGAGE LOAN COMPANIES

SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §§80.201, 80.203, 80.204

The Finance Commission of Texas (the commission) proposes to amend §80.201 concerning loan status forms, §80.203 concerning advertising, and §80.204 concerning books and records. The amended rules seek to add clarifying language, to update the Chapter 80 advertising requirements to more closely resemble those in Chapter 81 for Mortgage Bankers and Residential Mortgage Loan Originators and to provide for the Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA) new Integrated Disclosures issued by the Consumer Financial Protection Bureau known as Know Before You Owe and are effective October 3, 2015.

7 TAC §80.201(a) currently requires that whenever a conditional qualification is provided to a mortgage applicant, written confirmation of conditional qualification shall include the information in Form A, Figure: 7 TAC §80.201(a). As proposed to be amended, §80.201(a) will clarify that whenever a conditional qualification is provided to prospective mortgage applicants as well as to mortgage applicants, written confirmation of conditional qualification shall include the information in Form A, Figure: 7 TAC §80.201(a).

7 TAC §80.203(b)(2) contains the advertising requirements of residential mortgage loans offered by or through a mortgage company or originator. As proposed to be amended, §80.203(b)(2) will be amended to more closely resemble the advertising requirements of residential mortgage loans offered by or through mortgage bankers or originators contained in 7 TAC §81.203(b)(2).

7 TAC §80.204(b) lists the mortgage applications books and records that must be maintained by each company or originator. As proposed to be amended §80.204(b) will incorporate the integrated disclosure requirements of TILA/RESPA effective October 3, 2015.

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

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

Comments on the proposed amendments may be submitted in writing to Ernest C. Garcia, General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register*.

The amendments are proposed under Texas Finance Code §11.306, which authorizes the Finance Commission to adopt residential mortgage loan origination rules as provided by Chapter 156 and under §156.102, which provides that the Finance Commission may adopt rules to ensure compliance with Chapter 156, to carry out the intentions of the federal Secure and Fair

Enforcement for Mortgage Licensing Act of 2008 and to adopt rules regarding the books and records required to be kept.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 156.

§80.201. Loan Status Forms

(a) Except as otherwise provided by subsection (c) of this section, when provided to a prospective mortgage applicant or mortgage applicant, written confirmation of conditional qualification shall include the information in Form A, Figure: 7 TAC §80.201(a). This information can be provided by utilizing Form A or an alternate form that includes all of the information found on Form A. Either form may be modified by adding any of the following as needed: Figure: 7 TAC §80.201(a) (No change.)

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

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

§80.203. Advertising.

(a) (No change.)

(b) Any advertisement of residential mortgage loans which are offered by or through a mortgage company or originator shall conform to the following requirements:

(1) (No change.)

(2) Except as provided in subsection (c) of this section~~;~~ ~~if the person who caused the advertisement to be published is an originator~~ the advertisement shall contain:

(A) the name of the originator followed by the name of the sponsoring mortgage company as designated in the records of the Commissioner as of the date of the advertisement; ~~[phrase "Residential Mortgage Loan Originator";]~~

(B) the originator's Nationwide Mortgage Licensing System and Registry identification number; and

(C) the company's physical office or branch office street address in Texas. ~~[name of the company, as designated in the records of the Commissioner as of the date of the advertisement, through or for whom the originator conducts the advertised mortgage origination activities; and]~~

~~[(D) the company's physical office or branch office street address in Texas.]~~

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

(c) (No change.)

§80.204. Books and Records.

(a) (No change.)

(b) Mortgage Application Records. Each company or originator is required to maintain, at the location specified in their official record on file with the department, the following books and records:

(1) Residential Mortgage Loan File. For each residential mortgage loan application received the residential mortgage loan file shall contain at a minimum the following:

(A) a copy of the initial signed and dated residential mortgage loan application (including any attachments, supplements, or addenda thereto);

(B) either a copy of the signed closing statement or integrated closing disclosure, documentation of the timely denial, or other disposition of the application for a residential mortgage loan;

(C) a copy of the signed and dated disclosure statement required by Finance Code, Chapter 156 and §80.200(a) of this chapter;

(D) a copy of each item of correspondence, all evidence of any contractual agreement or understanding (including, but not limited to, any interest rate lock-ins or loan commitments), and all notes and memoranda of conversations or meetings with any mortgage applicant or any other party in connection with that residential mortgage loan application or its ultimate disposition;

(E) a copy of the notice to applicants required by Finance Code, §343.105; ~~[and]~~

(F) a copy of both the initial Good Faith Estimate and the initial Good Faith Estimate fee itemization worksheet~~;~~ ~~[if applicable; and]-]~~

(G) a copy of the initial integrated loan estimate disclosure, if applicable.

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

(c) - (h) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Ernest C. Garcia

General Counsel

Texas Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1297



CHAPTER 81. MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS

SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §§81.200, 81.201, 81.204

The Finance Commission of Texas (the commission) proposes to amend §81.200 concerning required disclosures, §81.201 concerning loan status forms, and §81.204 concerning books and records. The amended rules seek to update a statutory reference in a form, to add clarifying language and to provide for the Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA) new Integrated Disclosures issued by the Consumer Financial Protection Bureau known as Know Before You Owe and are effective October 3, 2015.

7 TAC §81.200(a) requires an originator to provide a Texas Mortgage Banker Disclosure Notice to a residential mortgage loan applicant and the form notice refers to §157.007 of the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, Chapter 157, Texas Finance Code. Section 157.007 was renumbered as §157.0021. As proposed the amended Texas Mortgage Banker Disclosure notice will update the statutory reference in the form itself to §157.0021.

7 TAC §81.201 requires that whenever a conditional qualification is provided to a mortgage applicant, written confirmation of conditional qualification shall include the information in Form A, Figure: 7 TAC §81.201(a). As proposed to be amended, §81.201(a) will clarify that whenever a conditional qualification is provided to prospective mortgage applicants as well as to mortgage applicants, written confirmation of conditional qualification shall include the information in Form A, Figure: 7 TAC §81.201(a).

7 TAC §81.204(b) lists the mortgage applications books and records that must be maintained by each originator. As proposed to be amended §81.204(b) will incorporate the integrated disclosure requirements of TILA/RESPA effective October 3, 2015.

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

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

Comments on the proposed amendments may be submitted in writing to Ernest C. Garcia, General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register*.

The amendments are proposed under Texas Finance Code §157.0023, which provides that the Finance Commission may adopt rules necessary to implement or fulfill the purpose of Chapter 157, as well as rules and forms for use by mortgage bankers, and to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 157.

§81.200. Required Disclosures.

(a) An originator sponsored under Finance Code, Chapter 157 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:
Figure: 7 TAC §81.200(a)

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

§81.201. Loan Status Forms.

(a) Except as otherwise provided by subsection (c) of this section, when provided to a prospective mortgage applicant or mortgage applicant, written confirmation of conditional qualification shall include the information in Form A, Figure: 7 TAC §81.201(a). This information can be provided by utilizing Form A or an alternate form that includes all of the information found on Form A. Either form may be modified by adding any of the following as needed:
Figure: 7 TAC §81.201(a) (No change.)

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

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

§81.204. Books and Records.

(a) (No change.)

(b) Mortgage Application Records. Each originator is required to maintain, at the location specified in their official record on file with the department, the following books and records:

(1) A residential mortgage loan file for each mortgage loan application received; each file shall contain at a minimum the following:

(A) a copy of the initial signed and dated mortgage loan application (including any attachments, supplements, or addenda thereto);

(B) either a copy of the signed closing statement or integrated closing disclosure, documentation of the timely denial, or other disposition of the application for a residential mortgage loan;

(C) a copy of the disclosure statement required by Finance Code, §157.0021 [~~§157.007~~] and §81.200(a) of this chapter;

(D) a copy of each item of correspondence, all evidence of any contractual agreement or understanding (including, but not limited to, any interest rate lock-ins or loan commitments), and all notes and memoranda of conversations or meetings with any mortgage applicant or any other party in connection with that residential mortgage loan application or its ultimate disposition;

(E) a copy of the notice to applicants required by Finance Code, §343.105; [~~and~~]

(F) a copy of both the initial Good Faith Estimate and the initial Good Faith Estimate fee itemization worksheet, if applicable; and[-]

(G) a copy of the initial integrated loan estimate disclosure, if applicable.

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

(c) - (h) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Ernest C. Garcia

General Counsel

Texas Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1297



PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

The Finance Commission of Texas (commission) proposes amendments to 7 TAC, Chapter 84, concerning Motor Vehicle Installment Sales. Amendments are being proposed to §84.102, concerning Definitions, and to the following sections in Subchapter H, concerning Retail Installment Sales Contract Provisions: §§84.801, 84.802, 84.805, 84.807, 84.808, and 84.809.

In general, the purpose of the amendments to these rules governing plain language contract provisions is to implement changes resulting from the commission's review of Chapter 90 under Texas Government Code, §2001.039, which includes corresponding revisions to the plain language rules in Chapter 84, concerning Motor Vehicle Installment Sales. The proposed amendments revise plain language non-standard contract submission procedures relating to readability levels, typefaces, and font sizes. Additionally, the amendments provide updated references to state and federal law and make technical corrections.

The agency circulated an early draft of proposed changes to interested stakeholders and received a few informal precomments. Some precomments provided clarifying suggestions and others offered feedback on the delayed implementation of these rules. Certain concepts recommended by the precommenters have been incorporated into this proposal and the agency appreciates the thoughtful input provided by stakeholders.

The majority of the proposed amendments center on changes made throughout several sections of rule text, as well as multiple figures, in order to provide consistency throughout the plain language rules. In the following paragraphs, most of the amendments will be outlined on an issue-by-issue basis. First, a basic statement of the rule issue will be provided. Second, the purpose and background of the proposed changes will be described. And third, a list of the relevant provisions containing proposed amendments related to that rule issue will be provided. Additionally, certain amendments isolated to one or a small number of rules will be discussed on a section-by-section basis, as appropriate.

In §84.102, the agency's acronym "OCCC," which stands for Office of Consumer Credit Commissioner, is proposed as a new defined term in §84.102(12) to allow appropriate use throughout the chapter. The remaining definitions have been renumbered accordingly.

Section 84.801 is the purpose section that outlines the purpose of the plain language contract provisions in Subchapter H, which are applicable to motor vehicle retail installment sales contracts. The term "commissioner" is being replaced with "OCCC." The agency believes that the use of "OCCC" will provide better clarity when the context calls for action by the agency, as opposed to the commissioner specifically.

The agency's non-standard contract submission procedure has been revised in order to provide more efficiency and clarity. In §84.802(b), the certification of readability includes proposed amendments adding a list of the typefaces and font sizes used in the contract, as well as the Flesch-Kincaid Grade Level score of the contract.

The filing requirements in §84.802(c) contain proposed amendments requiring submission in both Microsoft Word and PDF format. Paper filings or other formats will not be accepted under the new submission procedure. Proposed §84.802(c)(4) sets the maximum Flesch-Kincaid Grade Level score for Chapter 348 retail installment contracts, which is grade 11.

Section 86.101 outlines the consumer notifications that must be provided on all Chapter 345, 347, and 348 contracts. In accordance with instructions from the Texas Department of Information Resources, the OCCC has updated its website and e-mail address with the "texas.gov" extension: occc.texas.gov and consumer.complaints@occc.texas.gov. In order to provide consumers with the best contact information for the agency,

this proposal amends several provisions and figures with the OCCC's updated contact information.

Other revisions have been made to the text of the consumer notice to provide more clarity to consumers regarding the role of the OCCC in resolving complaints. Currently, this notice is referenced in the rules as the "Complaints and inquiries notice" or the "Consumer credit commissioner notice." To continue the use of the agency's acronym and provide consistency throughout the rules, this consumer notice is being relabeled as the "OCCC Notice." Proposed amendments to §86.101(a) also require creditors and lenders to include a statement that consumers can contact the phone number for questions or complaints, and allow creditors to include one or more of the following: mailing address, fax number, website, or e-mail.

Changes to update references to the notice with the new label ("OCCC Notice") are proposed in the following provisions: §§84.805(a), 84.807(19), and 84.808(19). Proposed revisions to update the text of the OCCC Notice are contained in §84.808(19). Additionally, figure §84.809(b) contains the OCCC Notice as revised for this proposal.

The rules often cite other state and federal law, federal regulations, as well as refer to other sections within title 7 of the Texas Administrative Code. Since the last review of the plain language rules, state laws have been added or revised and certain federal regulations have been relocated. The amendments include revisions to update existing citations, provide more accurate or specific citations, remove obsolete citations, or provide new or revised language in accordance with other law.

Revisions to update legal citations and references are proposed in the following provisions: §§84.808(8)(E), (9)(C)-(D) (proposed for deletion), (37), (40)(B), (41)-(43), and 84.809(c). Certain provisions have been renumbered or relettered accordingly.

Amendments are proposed to §84.808(8) and the accompanying figures relating to inspection fees on a motor vehicle retail installment sales contract. Under a recent amendment to Texas Transportation Code, §548.509, the Texas Department of Motor Vehicles (TxDMV) or a county assessor-collector will collect the portion of the inspection fee paid to the state. This amendment is implemented by TxDMV's "Two Steps, One Sticker" program. Under this program, the proof of registration and proof of inspection have been combined into one sticker, effective March 1, 2015. In figures 7 TAC §84.808(8)(A) and §84.808(8)(B), an optional disclosure has been updated to remove a reference to the seller keeping \$7 of the inspection fee, because this amount does not apply to all counties. In these same figures, the word "and/or" has been replaced with "and" in the section on government license and registration fees. Proposed new subparagraph (E) specifies how creditors should disclose the inspection fee in the itemization of amount financed. This provision explains that the creditor may use either of two methods. First, under clause (i), the creditor may include the portion remitted to the state in the "Government license and registration fees" section, and the portion remitted to the inspection station in the "Government vehicle inspection fees" section. Second, under clause (ii), the creditor may include the entire inspection fee in the "Government vehicle inspection fees" section, with the separate amounts paid to the state and the inspection station documented immediately below this section.

The agency believes that the first method of disclosing the inspection fee is the preferable method, because it closely corresponds to how the inspection fee is disclosed in the accompany-

ing documentation. The portion of the inspection fee paid to the inspection station is listed in the inspection report. The portion of the inspection fee paid to the state is disclosed in the title application receipt, where it is combined with other registration fees. The second method is included in response to an informal comment that suggested itemizing the two portions of the inspection fee immediately below the line for the inspection fee. Although there is flexibility in how the fee is disclosed, creditors must ensure that all disclosed amounts are accurate and that the retail buyer is not charged twice for the same fee.

Additional amendments are proposed throughout §84.808 to provide technical corrections for motor vehicle retail installment contracts. Amendments are proposed to figure 7 TAC §84.808(7), the Truth in Lending Act disclosure for motor vehicle retail installment sales contracts, to update references to earnings methods. Outdated provisions regarding documentary fees charged before August 1, 2010, have been deleted from §84.808(9)(C)-(E). Clarifying language has been added to §84.808(10) regarding how to disclose a downpayment. A statement providing a maximum insurance deductible for required property insurance has been added to figure 7 TAC §84.808(11). Conforming changes regarding insurance have been made to the model clause at §84.808(25). Clarifying changes have been made to §84.808(16)(A) to specify that the finance charge for the add-on method is calculated on an annual basis and is not the same as the annual percentage rate. Clarifying changes have been made to §84.808(16)(B)-(C) to specify that the contract rate disclosure should be provided in transactions where sales tax is deferred. Conforming changes are proposed in the model contract at figure 7 TAC §84.809(b).

A clarifying change has been made to §84.808(23) to specify that the clause on interest on the matured amount applies to contracts using the scheduled installment earnings method of the sum of the periodic balances method. A clarifying change has been made to §84.808(34)(E) to specify that the 10-day period to provide the notice of disposition applies when the creditor sells the vehicle at a public or private sale, in accordance with Texas Business and Commerce Code, §§9.610-9.612. Proposed new §84.808(37) specifies that the creditor may charge a returned check fee up to \$30, as authorized under Texas Business and Commerce Code, §3.506. Proposed new §84.808(40)(B) contains a model clause for commercial vehicle retail installment contracts, specifying that Texas Finance Code, Chapter 353 applies to the transaction. Additional technical changes and updates to citations are proposed throughout §84.808. Conforming changes are proposed in the model contract at figure 7 TAC §84.809(b).

The remaining amendments proposed throughout the rules relate to improvements in consistency, clarity, grammar, punctuation, and formatting. Any rules not included in this proposal will be maintained in their current form.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments to these rules 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 these rules 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 more efficiency, will comply with state and federal regulations, and will be more easily understood and enforced. Another public

benefit of these rule amendments will be increased uniformity and consistency in credit contracts.

Additional economic costs will be incurred in order for licensees to comply with the updated OCCC notice, updated legal citations, revised non-standard contract filing procedure, and other changes contained in the plain language contracts. The OCCC believes that the proposed amendments are necessary so that consumers and creditors will have the most current contact information for the OCCC, as well as contracts that reflect recent updates in state and federal law.

For those who will be required to comply with the proposed amendments, the anticipated costs would include the costs associated with producing new forms, and costs attributable to the loss of obsolete forms inventory. The agency seeks to minimize these costs by allowing licensees to use the current forms for 13 months after these amendments become effective. The costs to produce new forms are estimated to be approximately \$0.45 - \$0.55 per contract or new form.

For those licensees who have non-standard contract submissions on file with the agency, there will be anticipated costs in order for those licensees to submit new filings in accordance with the proposed changes. The anticipated costs would include expenses related to employee training to review the updated submission procedure, to prepare and submit the new non-standard contract filing, and to implement the revised contracts. These costs will vary widely among licensees depending on the number of employees who must be trained, as well as the labor costs associated with supervisors or other personnel assigned to create or maintain a licensee's non-standard contracts.

Some licensees who use or lease specialized computer software programs for their loan 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.

Licensees will have the ability to offset the anticipated costs of these proposed amendments due to mechanisms currently in place that allow licensees to collect fees related to document preparation and the administrative costs of doing business. For licensees that use retail installment contracts under Chapter 348, §348.006(e) provides the ability for motor vehicle sales finance licensees to file for an increased documentary fee.

The agency is not aware of any adverse economic effect on small businesses as compared to the effect on large businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule amendments, the agency invites comments from interested stakeholders and the public on any economic impact on small businesses, as well as any alternative methods of achieving the purpose of these proposed amendments should that effect be adverse to 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.texas.gov. 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 rules contained in Chapter 84 provide model clauses and model contracts. Licensees are not required to adopt the model language contained in the rules. For those licensees utilizing the model contracts, the prior model language is acceptable and the agency will permit licensees to use the prior model language (without a non-standard contract submission) until December 31, 2016, to deplete supplies of existing forms during a 13-month transition period after the anticipated effective date of the rules.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §84.102

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.

All of the plain language amendments are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of contracts for a loan under Chapter 342, a retail installment transaction under Chapter 348, or a home equity loan regulated by the Office of Consumer Credit Commissioner.

The amendments regarding the OCCC notice are proposed under Texas Finance Code, §14.104, which requires that a written contract of an authorized lender subject to the OCCC's regulation must contain the name, mailing address, and telephone number of the office. The OCCC believes that a modernized interpretation of §14.104 would include the agency's updated website and email address.

The amendments concerning motor vehicle contracts are proposed under Texas Finance Code, §348.513 which grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter. Additionally, §348.513 also authorizes the commission to modify the standard form required by §348.0091 to conform to the provisions of the Truth in Lending Act or a regulation issued under authority of that Act.

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

§84.102. Definitions.

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

(1) - (11) (No change.)

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

(13) [(42)] Ordinary vehicle--A motor vehicle that is used primarily for personal, family, or household use.

(14) [(43)] Principal balance subject to finance charge--The principal balance used in the determination or calculation of the time price differential charge.

(A) Sales tax advanced transaction--In a sales tax advanced transaction, the principal balance subject to a finance charge is computed by:

(i) adding:

(I) the cash price of the vehicle;

(II) the amount of the authorized itemized charges;

(III) sales tax;

(IV) an authorized and properly disclosed documentary fee;

(V) an amount authorized under Texas Finance Code, §348.404(b); and

(ii) subtracting from the results under clause (i) of this subparagraph the amount of the retail buyer's down payment in money, goods, or both.

(B) Sales tax deferred transaction--In a sales tax deferred transaction, the principal balance subject to a finance charge does not include the deferred sales tax. The principal balance subject to a finance charge is computed by:

(i) adding:

(I) the cash price of the vehicle (excluding sales tax);

(II) the amount of the authorized itemized charges (excluding sales tax);

(III) an authorized and properly disclosed documentary fee;

(IV) an amount authorized under Texas Finance Code, §348.404(b); and

(ii) subtracting from the results under clause (i) of this subparagraph the amount of the retail buyer's down payment in money, goods, or both.

(15) [(44)] Regular payment contract--Any contract that is not an irregular payment contract.

(16) [(45)] Scheduled installment earnings method--The scheduled installment earnings method is a method to compute the finance charge by applying a daily rate to the unpaid principal balance as if each payment will be made on its scheduled installment date. A payment received before or after the due date does not affect the amount of the scheduled reduction in the unpaid principal balance. Under this method, a finance charge refund is calculated by deducting the earned finance charges from the total finance charges. If prepayment in full or demand for payment in full occurs between payment due dates, a daily rate equal to 1/365th of the annual rate is multiplied by the unpaid principal balance. The result is then multiplied by the actual number of days from the date of the previous scheduled installment through the date of prepayment or demand for payment in full to determine earned finance charges for the abbreviated period. In addition to the earned finance charges calculated in this paragraph, the creditor may also earn a \$25 acquisition fee so long as the total of the earned finance charges and the acquisition fee do not exceed the finance charge disclosed in the contract. The creditor is not required to refund unearned finance charges if the refund is less than \$1.00. The scheduled installment earnings method may be used with either an irregular payment contract or a regular payment contract. The computation of finance charges must comply with the U.S. Rule as defined in paragraph (22) of this section.

(17) [(46)] Sales tax advanced transaction--A retail installment sales transaction in which a retail seller remits the entire amount of the sales tax to the appropriate taxing authority within 20 working days of the sale.

(18) [(47)] Sales tax deferred transaction--A retail installment sales transaction in which a retail seller or a qualified related finance company collects sales tax from the retail buyer and remits the tax under Texas Tax Code, §152.047 to the Texas Comptroller of Public Accounts.

(19) [(48)] Seller--The seller of the motor vehicle. This term is synonymous with the term "retail seller."

(20) [(49)] Sum of the periodic balances method (Rule of 78s).

(A) Under this method, the finance charge refund is calculated as follows:

(i) Subtract an acquisition fee not greater than \$25 from the total finance charge.

(ii) Multiply the amount computed in clause (i) of this subparagraph by the refund percentage computed below. The result is the finance charge refund.

(iii) Compute the refund percentage by:

(I) Computing the sum of the unpaid monthly balances under the contract's schedule of payments beginning:

(-a-) On the first day, after the date of the prepayment or demand for payment in full; that is, the date of a month that corresponds to the date of the month that the first installment is due under the contract; or

(-b-) If the prepayment or demand for payment in full is made before the first installment date under the contract, one month after the date of the second scheduled payment of the contract occurring after the prepayment or demand;

(II) Dividing the result in subclause (I) of this clause by the sum of all of the monthly balances under the contract's schedule of payments.

(B) The creditor is not required to give a finance charge refund if it would be less than \$1.00.

(C) The sum of the periodic balances method may not be used with an irregular payment contract.

(21) [(20)] True daily earnings method--The true daily earnings method is a method to compute the finance charge by applying a daily rate to the unpaid principal balance. The daily rate is 1/365th of the equivalent contract rate. The earned finance charge is computed by multiplying the daily rate of the finance charge by the number of days the actual unpaid principal balance is outstanding. Payments are credited as of the time received; therefore, payments received prior to the scheduled installment date result in a greater reduction of the unpaid principal balance than the scheduled reduction, and payments received after the scheduled installment date result in less than the scheduled reduction of the unpaid principal balance. The computation of finance charges must comply with the U.S. Rule as defined in paragraph (22) of this section.

(22) [(21)] U.S. Rule--The ruling of the United States Supreme Court in *Story v. Livingston*, 38 U.S. (13 Pet.) 359, 371 (1839) that, in partial payments on a debt, each payment is applied first to finance charge and any remainder reduces the principal. Under this rule, accrued but unpaid finance charge cannot be added to the principal and interest cannot be compounded. The U.S. Rule is described in Regulation Z, 12 C.F.R. Part 226, Appendix J, and 12 C.F.R. Part 1026, Appendix J.

(23) [(22)] Vehicle--A motor vehicle as defined by Texas Finance Code, §348.001(4).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2015.

TRD-201503336

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 936-7621

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SUBCHAPTER H. RETAIL INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §§84.801, 84.802, 84.805, 804.807 - 804.809

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.

All of the plain language amendments are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of contracts for a loan under Chapter 342, a retail installment transaction under Chapter 348, or a home equity loan regulated by the Office of Consumer Credit Commissioner.

The amendments regarding the OCCC notice are proposed under Texas Finance Code, §14.104, which requires that a written contract of an authorized lender subject to the OCCC's regulation must contain the name, mailing address, and telephone number of the office. The OCCC believes that a modernized interpretation of §14.104 would include the agency's updated website and email address.

The amendments concerning motor vehicle contracts are proposed under Texas Finance Code, §348.513 which grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter. Additionally, §348.513 also authorizes the commission to modify the standard form required by §348.0091 to conform to the provisions of the Truth in Lending Act or a regulation issued under authority of that Act.

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

§84.801. *Purpose.*

(a) Purpose.

(1) Model provisions applicable to ordinary vehicles. The purpose of this subchapter is to provide model provisions and a model plain language contract in English for Texas Finance Code, Chapter 348 motor vehicle installment sales contract provisions for ordinary vehicles. The establishment of model provisions for these transactions will encourage the use of simplified wording that will ultimately benefit consumers by making these contracts easier to understand. Use of the "plain language" model contract by a seller is not mandatory. Except for retail installment sales contracts involving commercial vehicles, the seller, however, may not use a contract other than a model contract unless the seller has submitted the contract to the OCCC [eommissioner] in compliance with §84.802 of this title (relating to Non-Standard Contract Filing Procedures). The OCCC [eommissioner] will issue an order disapproving the contract if the OCCC [eommissioner] determines the contract does not comply with this section or rules adopted under this section. A seller may not claim the OCCC's [eommissioner's] failure to disapprove a contract constitutes approval.

(2) (No change.)

(b) (No change.)

§84.802. *Non-Standard Contract Filing Procedures.*

(a) Non-standard contracts. A non-standard contract is a contract that does not use the model contract provisions. Non-standard contracts submitted in compliance with the provisions of Texas Finance Code, §341.502(c) will be reviewed to determine that the contract is written in plain language. ~~[Non-standard contracts submitted for review may gain certain protections under the provisions of Texas Finance Code, §341.502.]~~

(b) Certification of readability. Contract filings subject to this chapter must be accompanied by a certification signed by an officer of the creditor or the entity submitting the form on behalf of the creditor. The certification must state that the contract is written in plain language ~~and [(i.e.,]~~ that the contract can be easily understood by the average consumer~~]).~~ The certification must state that the contract is printed in an easily readable font and type size, including a list of the typefaces used in the contract, the font sizes used in the contract, and the Flesch-Kincaid Grade Level score of the contract ~~The OCCC will prescribe the form of the certification.~~

(c) Filing requirements. Contract filings must be identified as to the transaction type. Contract filings must be submitted in accordance with the following requirements: ~~[on paper that is suitable for permanent record storage and imaging. Handwritten forms or handwritten corrections will not be accepted. In addition to the paper submission, the licensee must also submit the contract filings in an electronic version. The electronic version must be submitted in a Corel WordPerfect (-wpd), MS Word (-doc), or a text (-txt) format.]~~

(1) Microsoft Word format. One copy must be submitted in a Microsoft Word format with the document having either a .doc or .docx extension. The Flesch-Kincaid Grade Level score of the contract must be based on the Microsoft Word readability statistics function for the Microsoft Word version of the contract.

(2) PDF format. One copy must be submitted in a PDF format so that the contract may be visually reviewed in its entirety.

(3) No other formats permitted. The OCCC will not accept paper filings or any other unlisted formats for non-standard contract filings.

(4) Maximum Flesch-Kincaid score. The maximum Flesch-Kincaid Grade Level score for a Chapter 348 contract filing is grade 11.

(d) Contact person. One person must be designated as the contact person for each filing submitted. Each submission must provide the name, address, phone number, and if available, the email address and fax number of the contact person for that filing. If the contracts are submitted by anyone other than the company itself, the contracts must be accompanied by a dated letter which contains a description of the anticipated users of the contracts and designates the legal counsel or other designated contact person for that filing.

(e) Commercial vehicle. Pursuant to Texas Finance Code, §341.502(a), a motor vehicle retail installment sales contract involving a commercial vehicle does not have to be submitted in accordance with this section.

§84.805. *Other Disclosures Required by Commission Rule.*

(a) The ~~OCCC [consumer credit commissioner]~~ notice required by §86.101 of this title (relating to Consumer Notifications) must be disclosed.

(b) (No change.)

§84.807. *Contract Provisions.*

A Texas Finance Code, Chapter 348 motor vehicle installment sales contract may include the following contract provisions to the extent not

prohibited by law or regulation. If the seller desires to assess certain charges or exercise certain rights under one of the following provisions, except provisions relating to default, repossessions, acceleration, and assignment of the contract, the seller must include the provision in the contract. A seller may delete inapplicable provisions. A seller who does not desire to apply a provision is not required to include it in the contract. For example, the seller may omit the balloon payment provisions if there is no balloon payment. A seller may also exclude non-relevant portions of a model clause. For example, a seller who does not routinely finance certain insurance coverages may omit those non-applicable portions of the model clause. A Texas Finance Code, Chapter 348 motor vehicle installment sales contract may contain the following provisions:

(1) - (18) (No change.)

(19) OCCC [Consumer credit commissioner] notice;

(20) - (45) (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) - (6) (No change.)

(7) Truth in Lending Act disclosure. The model clause regarding Truth in Lending Act disclosure reads:
Figure: 7 TAC §84.808(7)

(8) Itemization of amount financed. The creditor drafting the contract is given considerable flexibility regarding the itemization of amount financed disclosure so long as the itemization of amount financed disclosure complies with the Truth in Lending Act. As an example, a creditor may disclose the manufacturer's rebate either as: a component of the downpayment; or a deduction from the cash price of the motor vehicle. The model contract provision for the itemization of the amount financed discloses the manufacturer's rebate as a component of the downpayment. If the creditor elected to disclose the manufacturer's rebate as a deduction from the cash price of the motor vehicle, the cash price component of the itemization of amount financed would be amended to reflect the dollar amount of the manufacturer's rebate being deducted from the cash price of the motor vehicle.

(A) The model clause regarding itemization of amount financed-sales tax advance reads:
Figure: 7 TAC §84.808(8)(A)

(B) The model clause regarding itemization of amount financed-sales tax deferred reads:
Figure: 7 TAC §84.808(8)(B)

(C) - (D) (No change.)

(E) Inspection fee. Under Texas Transportation Code, §548.509, at the time of registration, the Texas Department of Motor Vehicles or a county assessor-collector will collect a portion of the inspection fee to be remitted to the state. The creditor may disclose the inspection fee by either of the following methods:

(i) including the portion remitted to the state in the "Government license and registration fees" section, and the portion remitted to the inspection station in the "Government vehicle inspection fees" section; or

(ii) including the entire inspection fee in the "Government vehicle inspection fees" section, with the amounts paid to the state and the inspector documented immediately below this section with the following language: "To State \$ _____" and "To Inspection Station \$ _____."

(9) Documentary fee.

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

{(C) 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:}

{(i) "Un honorario de documentación no es un honorario oficial. Un honorario de documentación no es requerido por la ley, pero puede ser cargada al comprador como gastos de manejo de documentos y para realizar servicios relacionados con el cierre de una venta. Un honorario de documentación no puede exceder \$50 (un contrato de vehículo automotor o una cantidad razonable acordada por las partes para un contrato de vehículo comercial pesado). Esta notificación es requerida por la ley."; or}

{(ii) "Un cargo documental no es un cargo oficial. La ley no exige que se imponga un cargo documental. Pero éste podría cobrarse a los compradores por el manejo de la documentación y la prestación de servicios en relación con el cierre de una venta. Un cargo documental no puede exceder de \$50 para (un contrato de vehículo automotor o una cantidad razonable acordada por las partes para un contrato de vehículo comercial pesado). Esta notificación se 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) Deferred downpayments. The creditor has considerable flexibility in disclosing the deferred downpayments. The model provision discloses the deferred downpayments by placing the information, the due date and dollar amount of the deferred downpayments, in several boxes. If a creditor uses this model provision, the creditor would enter the due date and dollar amount of each deferred downpayment in the appropriate boxes. As an alternative to this model provision, a creditor may disclose the deferred downpayments in the Payment Schedule of the Amount Financed in the federal disclosure box. If a creditor elects this option, the due date and the dollar amount of the deferred downpayment must be shown. If the total amount of the deferred downpayment is not satisfied by the date of the second regularly scheduled installment, the deferred downpayment must be included in

the Payment Schedule. As another alternative, the creditor may disclose the deferred downpayment amount in the Payment Schedule. If the deferred downpayment amount is disclosed in the Payment Schedule, then the deferred downpayment must be included in the Total of Payments. The model clause regarding deferred downpayments reads: Figure: 7 TAC §84.808(10) (No change.)

(11) Required physical damage insurance. The creditor may choose to omit the statement of the retail buyer's right to obtain substitute coverage from another source. The model clause regarding required physical damage insurance reads: Figure: 7 TAC §84.808(11)

(12) - (15) (No change.)

(16) Finance charge earnings methods:

(A) Regular transaction using sum of the periodic balances 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) (No change.)

(II) "The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. The add-on Finance Charge is calculated at a rate of \$ ___ per \$100.00 per year. This rate is not the same as the Annual Percentage Rate."

(ii) Deferred sales tax. The model clause regarding deferred sales tax reads: "The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance subject to a finance charge and added as a lump sum to the unpaid principal balance subject to a Finance Charge for the full term of the contract. The add-on Finance Charge is calculated at a rate of \$ ___ per \$100.00 per year. This rate is not the same as the Annual Percentage Rate."

(B) True daily earnings method.

(i) (No change.)

(ii) Deferred sales tax: 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 ____%. 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."

(C) Scheduled installment earnings method.

(i) (No change.)

(ii) Deferred sales tax. 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 ____%. This contract rate may not be the same as the Annual 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 sched-

uled. The unpaid principal balance subject to a Finance Charge does not include the late charges, sales tax, or returned check charges."

(17) - (18) (No change.)

(19) OCCC [Consumer Credit Commissioner] notice. The following notice satisfies the requirements of Texas Finance Code, §14.104 and §86.101 of this title (relating to Consumer Notifications). The telephone number of the retail seller, creditor, or holder may be printed in conjunction with the name and address of the retail seller, creditor, or holder elsewhere on the contract or agreement provided the notice required by Texas Finance Code, §14.104 is amended to direct the reader's attention to the area of the contract where the telephone number may be found. The OCCC [consumer credit commissioner] notice reads: "For questions or complaints about this contract, contact (insert name of creditor) at (insert creditor's phone number and, at creditor's option, one or more of the following: mailing address, fax number, website, e-mail address). The Office of Consumer Credit Commissioner (OCCC) is a state agency, and it enforces certain laws that apply to this contract. If a complaint or question cannot be resolved by contacting the creditor, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov." [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 N. Lamar Blvd., Austin, Texas 78705-4207; (800) 538-1579; www.occc.state.tx.us; and can be contacted relative to any inquiries or complaints.]

(20) - (22) (No change.)

(23) Interest on matured amount. For contracts using the scheduled installment earnings method or the sum of the periodic balances method, the [The] model provision for interest on any matured amount at any rate permitted by law reads: "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." In this provision, the maximum rate allowed by law refers to the rate found in Texas Finance Code, Chapter 303.

(24) (No change.)

(25) Agreement to keep motor vehicle insured. The model clause regarding agreement to keep the motor vehicle insured reads: "I agree to have physical damage insurance covering loss or damage to the motor vehicle for the term of this contract. The insurance must cover your interest in the vehicle. The insurer must be authorized to do business in Texas." The creditor may include one or both of the following optional provisions [provision]:

(A) "The insurance must include collision coverage and either comprehensive or fire, theft, and combined additional coverage."

(B) "The maximum deductible is \$ _____."

(26) - (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) - (D) (No change.)

(E) Disposition of motor vehicle. The model clause regarding disposition of the motor vehicle reads: "If I don't pay you to get the motor vehicle back, you can sell it or take other action allowed by law. If you sell the motor vehicle in a public or private sale, you [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 record transfer of title."

(F) - (G) (No change.)

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

(37) Dishonored check fee. Under Texas Business and Commerce Code, §3.506, the holder of a payment device (including a check) may charge a processing fee up to \$30 if the payment device is dishonored. The model clause for a dishonored check fee reads: "I agree to pay you a fee of up to \$30 for a returned check. You can add the fee to the amount I owe or collect it separately."

(38) [(37)] 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."

(39) [(38)] No waiver and limitations on creditor's rights and usury savings.

(A) A model clause to prevent a creditor's delay in enforcing rights under the contract from affecting a waiver of those rights reads: "If you don't enforce your rights every time, you can still enforce them later."

(B) A provision establishing limitations on the creditor's rights reads: "You will exercise all of your rights in a lawful way."

(C) The model clause regarding usury savings reads: "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 over all your other acts."

(40) [(39)] Applicable law.

(A) General model clause. A model clause to establish the law that will apply to the contract reads: "Federal law and Texas law apply to this contract."

(B) Additional clause for commercial vehicles. Under Texas Finance Code, §353.009(b), if a commercial vehicle retail installment sales contract does not state that Texas Finance Code, Chapter 353 applies, then the contract is subject to Texas Finance Code, Chapter 348. In a commercial vehicle retail installment sales contract,

the creditor may include the following clause to specify that Chapter 353 applies: "Chapter 353 of the Texas Finance Code applies to this contract."

(41) [(40)] Warranty disclaimer. The disclaimer of express and implied warranties should be set out from the surrounding text so that the disclosure is conspicuous. A disclaimer of express and implied warranties, such as the following, is permitted by Texas Business and Commerce Code, §2.316 [Article 2, Subchapter C], and reads: "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 of fitness for a particular purpose. This provision does not affect any warranties covering the motor vehicle that the motor vehicle manufacturer may provide."

(42) [(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 Holder in Due Course Rule [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 HEREUNDER. This provision applies to this contract only if the motor vehicle financed in the contract was purchased for personal, family, or household use."

(43) [(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 Rule [Regulation], 16 C.F.R. Part 455 [§§455.1 et seq.], reads:

(A) "Used Car Buyer's Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale."

(B) Spanish Translation: "Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta."

(44) [(43)] Negotiability and assignment. The disclosure of the negotiability of the contract should be placed on the front side of the contract and may read:

(A) "The Annual Percentage Rate may be negotiated with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge";

(B) "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"; or

(C) "A customer may obtain their own financing. The finance charge may be negotiable. The dealership may assign the retail installment contract. There is no duty to disclose the terms for the sale of this contract (for example [e.g.], price paid to retail seller to purchase retail installment contract)."

§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) A contract may include other provisions that are not prohibited by law, but the contract including the other provisions must be submitted to the OCCC under §84.802 of this title (relating to Non-Standard Contract Filing Procedures) [Office of Consumer Credit Commissioner for readability review before the creditor includes them].

(d) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2015.

TRD-201503337

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 936-7621



CHAPTER 86. RETAIL CREDITORS

SUBCHAPTER A. REGISTRATION OF RETAIL CREDITORS

7 TAC §86.101

The Finance Commission of Texas (commission) proposes amendments to 7 TAC, Chapter 86, concerning Retail Creditors. Amendments are being proposed to §86.101, concerning Consumer Notifications.

In general, the purpose of the amendments to §86.101 is to implement changes resulting from the commission's review of Chapter 90 under Texas Government Code, §2001.039, which includes corresponding revisions to §86.101 to update the agency's contact information.

The agency circulated an early draft of proposed changes to interested stakeholders and received a few informal precomments. Some precomments provided clarifying suggestions and others offered feedback on the delayed implementation of these amendments. Certain concepts recommended by the precommenters have been incorporated into this proposal and the agency appreciates the thoughtful input provided by stakeholders.

Section 86.101 outlines the consumer notifications that must be provided on all Chapter 345, 347, and 348 contracts. In accordance with instructions from the Texas Department of Information Resources, the OCCC has updated its website and e-mail address with the "texas.gov" extension: occc.texas.gov and consumer.complaints@occc.texas.gov. In order to provide

consumers with the best contact information for the agency, this proposal amends §86.101 with the OCCC's updated contact information.

Other revisions have been made to the text of the consumer notice to provide more clarity to consumers regarding the role of the OCCC in resolving complaints. Currently, this notice is referenced in the rules as the "Complaints and inquiries notice" or the "Consumer credit commissioner notice." To continue the use of the agency's acronym and provide consistency throughout the rules, this consumer notice is being relabeled as the "OCCC Notice." Proposed amendments to §86.101(a) also require creditors and lenders to include a statement that consumers can contact the phone number for questions or complaints, and allow creditors to include one or more of the following: mailing address, fax number, website, or e-mail. The remaining amendments relate to improvements in clarity and formatting, by providing taglines to both subsections of §86.101.

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 more efficiency and will be more easily understood and enforced. Another public benefit of these rule amendments will be increased uniformity and consistency in credit contracts.

Additional economic costs will be incurred in order for licensees to comply with the updated OCCC notice. The OCCC believes that the proposed amendments are necessary so that consumers and creditors will have the most current contact information for the OCCC.

For those who will be required to comply with the proposed amendments, the anticipated costs would include the costs associated with producing new forms, and costs attributable to the loss of obsolete forms inventory. The agency seeks to minimize these costs by allowing licensees to use the current forms for 13 months after these amendments become effective. The costs to produce new forms are estimated to be approximately \$0.45 - \$0.55 per contract or new form.

For those licensees who have non-standard contract submissions on file with the agency, there will be anticipated costs in order for those licensees to submit new filings in accordance with the proposed changes. The anticipated costs would include expenses related to employee training to review the updated submission procedure, to prepare and submit the new non-standard contract filing, and to implement the revised contracts. These costs will vary widely among licensees depending on the number of employees who must be trained, as well as the labor costs associated with supervisors or other personnel assigned to create or maintain a licensee's non-standard contracts.

Some licensees who use or lease specialized computer software programs for their loan 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.

Licensees will have the ability to offset the anticipated costs of these proposed amendments due to mechanisms currently in place that allow licensees to collect fees related to document preparation and the administrative costs of doing business. For licensees that use retail installment contracts under Chapter 348, §348.006(e) provides the ability for motor vehicle sales finance licensees to file for an increased documentary fee. For registrants that operate under Chapter 345, statutory and rule changes made during 2013 provide for the collection of increased documentary fees.

The agency is not aware of any adverse economic effect on small businesses as compared to the effect on large businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule amendments, the agency invites comments from interested stakeholders and the public on any economic impact on small businesses, as well as any alternative methods of achieving the purpose of these proposed amendments should that effect be adverse to 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.texas.gov. 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.

The amendments regarding the OCCC notice are proposed under Texas Finance Code, §14.104, which requires that a written contract of an authorized lender subject to the OCCC's regulation must contain the name, mailing address, and telephone number of the office. The OCCC believes that a modernized interpretation of §14.104 would include the agency's updated website and email address.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 345, 347, and 348.

§86.101. Consumer Notifications.

(a) OCCC notice. When a written contract or agreement is made under the authority of Texas Finance Code, Chapter 345, 347, or 348, the contract must contain as a separate section or otherwise conspicuously set out from the surrounding written material, the following statement: "For questions or complaints about this contract, contact (insert name of creditor) at (insert creditor's phone number and, at creditor's option, one or more of the following: mailing address, fax number, website, e-mail address). The Office of Consumer Credit Commissioner (OCCC) is a state agency, and it enforces certain laws that apply to this contract. If a complaint or question cannot be resolved by contacting the creditor, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov." ["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; (800) 538-1579; www.occc.state.tx.us; and can be contacted relative to any inquiries or complaints."]

(b) **Creditor information.** The telephone number of the retail seller, creditor, or holder may be printed in conjunction with the name and address of the retail seller, creditor, or holder elsewhere on the contract or agreement provided the notice in subsection (a) of this section is amended to direct the reader's attention to the area of the contract where the telephone number may be found.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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TRD-201503334

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 936-7621



CHAPTER 90. CHAPTER 342, PLAIN LANGUAGE CONTRACT PROVISIONS

The Finance Commission of Texas (commission) proposes amendments to 7 TAC, Chapter 90, concerning Chapter 342, Plain Language Contract Provisions.

In general, the purpose of the amendments to these rules governing plain language contract provisions is to implement changes resulting from the commission's review of Chapter 90 under Texas Government Code, §2001.039. Corresponding revisions to §86.101 and the plain language rules in Chapter 84, concerning Motor Vehicle Installment Sales are being proposed separately in this issue of the *Texas Register*.

The proposed amendments revise plain language non-standard contract submission procedures relating to readability levels, typefaces, and font sizes. The amendments also update plain language contracts to conform with federal TILA-RESPA integrated disclosures. Additionally, the amendments provide updated references to state and federal law and make technical corrections.

The proposed changes affect the rules listed, as contained in the following subchapters of Chapter 90: Subchapter A, concerning General Provisions (§§90.101 - 90.105); Subchapter B, concerning Secured Consumer Installment Loans (Chapter 342, Subchapter E) (§§90.201 - 90.204); Subchapter C, concerning Signature Loans (Chapter 342, Subchapter F) (§§90.301 - 90.304); Subchapter D, concerning Second Lien Home Equity Loans (Chapter 342, Subchapter G) (§§90.401 - 90.404); Subchapter E, concerning Second Lien Purchase Money Loans (Chapter 342, Subchapter G) (§§90.501 - 90.504); Subchapter F, concerning Second Lien Home Improvement Contracts (Chapter 342, Subchapter G) (§§90.601 - 90.604); and Subchapter G, concerning Spanish Disclosures (§90.701 and §90.703).

The notice of intention to review 7 TAC Chapter 90 was published in the July 17, 2015, issue of the *Texas Register* (40 TexReg

4707). The commission received no comments in response to that notice.

The agency circulated an early draft of proposed changes to interested stakeholders and received a few informal precomments. Some precomments provided clarifying suggestions and others offered feedback on the delayed implementation of these rules. Certain concepts recommended by the precommenters have been incorporated into this proposal and the agency appreciates the thoughtful input provided by stakeholders.

The majority of the proposed amendments center on changes made throughout several sections of rule text, as well as multiple figures, in order to provide consistency throughout the plain language rules. In the following paragraphs, most of the amendments will be outlined on an issue-by-issue basis. First, a basic statement of the rule issue will be provided. Second, the purpose and background of the proposed changes will be described. And third, a list of the relevant provisions containing proposed amendments related to that rule issue will be provided. Additionally, certain amendments isolated to one or a small number of rules will be discussed on a section-by-section basis, as appropriate.

In §90.101(6), the agency's acronym "OCCC," which stands for Office of Consumer Credit Commissioner, is proposed as a new defined term to allow appropriate use throughout the chapter. The remaining definitions have been renumbered accordingly.

In Chapter 90, each subchapter contains a purpose section that outlines the purpose of the particular plain language contract provisions provided in that subchapter. In each respective purpose section, the term "commissioner" is being replaced with "OCCC." The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically. The following rules include proposed amendments to replace "commissioner" with "OCCC": §§90.201, 90.301, 90.401, 90.501, and 90.601.

The agency's non-standard contract submission procedure has been revised in order to provide more efficiency and clarity. In §90.104(b), the certification of readability includes proposed amendments adding a list of the typefaces and font sizes used in the contract, as well as the Flesch-Kincaid Grade Level score of the contract. To provide consistency, the list of easily readable typefaces and use of the typeface "Times New Roman" instead of "Times" has been revised in §90.103 to match the language in current §84.103.

The filing requirements in §90.104(c) contain proposed amendments requiring submission in both Microsoft Word and PDF format. Paper filings or other formats will not be accepted under the new submission procedure. Proposed §90.104(c)(4) sets the maximum Flesch-Kincaid Grade Level scores for each type of contract submitted, which are as follows: grade 8 for Chapter 342, Subchapter F loans; grade 9 for Chapter 342, Subchapter E loans; and grade 10 for Chapter 342, Subchapter G loans. One precommenter indicated that grade 8 is too low for a Subchapter F loan contract that includes an arbitration agreement. However, the agency has received non-standard Subchapter F loan contract submissions that include arbitration agreements and have a score of grade 8 or below. The agency believes that achieving a readability level of grade 8 or below is important for Subchapter F contracts. The agency's experience indicates that these contracts, even those including an arbitration provision, can be drafted to achieve that grade level goal.

Section 90.105 specifies the consumer notices for Chapter 342 contracts. In accordance with instructions from the Texas Department of Information Resources, the OCCC has updated its website and e-mail address with the "texas.gov" extension: occc.texas.gov and consumer.complaints@occc.texas.gov. In order to provide consumers with the best contact information for the agency, this proposal amends several provisions and figures with the OCCC's updated contact information.

Other revisions have been made to the text of the consumer notice to provide more clarity to consumers regarding the role of the OCCC in resolving complaints. Currently, this notice is referenced in the rules as the "Complaints and inquiries notice" or the "Consumer credit commissioner notice." To continue the use of the agency's acronym and provide consistency throughout the rules, this consumer notice is being relabeled as the "OCCC Notice." In addition, a proposed amendment to §90.105(b)(1) requires the lender to include its phone number in the OCCC notice of each Chapter 342 loan contract. This is similar to the phone number requirement that already exists under §86.101 for contracts under Chapters 345, 347, and 348. Proposed new §90.105(b)(6) specifies that the phone number may be included in a portion of the contract other than the OCCC notice, as long as the reader's attention is directed to the area of the document where the phone number may be found. Proposed amendments to §90.105(b)(1) also require creditors and lenders to include a statement that consumers can contact the phone number for questions or complaints, and allow creditors to include one or more of the following: mailing address, fax number, website, or e-mail.

Changes to update references to the notice with the new label ("OCCC Notice") are proposed in the following provisions: §§90.105 (rule title), 90.202(23), 90.203(b)(24), 90.302(22), 90.303(b)(21), 90.402(a)(21), 90.403(b)(21), 90.502(a)(21), 90.503(b)(21), 90.602(a)(2)(X), (4)(Y), and 90.603(c)(24), (e)(25). Certain provisions have been renumbered or relettered accordingly.

Proposed revisions to update the text of the OCCC Notice are contained in the following provisions: §§90.105(b), 90.203(b)(24), 90.303(b)(21), 90.403(b)(21), 90.503(b)(21), and 90.603(c)(24), (e)(25). Certain provisions have been renumbered or relettered accordingly.

The following figures contain the OCCC Notice as revised for this proposal: §§90.204(a)(7)-(8), 90.304(a)(7)-(9), 90.404(a)(8), 90.504(a)(8), and 90.604(a)(14), (16). Certain figures have been renumbered or relettered accordingly.

The rules often cite other state and federal law, federal regulations, as well as refer to other sections within title 7 of the Texas Administrative Code. Since the last review of the plain language rules, state laws have been added or revised, certain federal regulations have been relocated, and the Consumer Financial Protection Bureau (CFPB) has been created and assumed the duties of other federal agencies. The amendments include revisions to update existing citations, provide more accurate or specific citations, remove obsolete citations, or provide new or revised language in accordance with other law.

Revisions to update legal citations and references are proposed in the following provisions: §§90.102, 90.303(b)(3), 90.402(c), 90.403(b)(1)(A), (b)(3)(B), (c)(1)(P), 90.404(a)(7), 90.502(c), 90.503(b)(1)(A), (b)(3)(B), (c)(1)(O), 90.504(a)(7), 90.602(b), 90.603(b)(12), (c)(1)(A), (c)(5)(B), (c)(26), (d)(20), (e)(1)(A), (e)(5)(B), (f)(1)(P), 90.604(a)(1), (a)(12), 90.701(a)-(b), and

90.703. Additionally, citations have been added to or updated in the following figures: §§90.404(a)(8)-(9), 90.504(a)(8)-(9), and 90.604(a)(14), (16)-(17). Certain provisions have been renumbered or relettered accordingly.

In §90.203(b)(5) regarding contracts under Subchapter E of Chapter 342, a clarifying change has been made to specify that the clause on interest on the matured amount applies to contracts using the scheduled installment earnings method of the sum of the periodic balances method.

The rate bracket amounts for loans governed by Subchapter E of Texas Finance Code, Chapter 342 are adjusted on an annual basis. In order to direct the reader to the most recent rate bracket amounts, the following sentence has been added to §90.203(b)(7): "The model finance charge earnings and refund method clauses include rate bracket amounts that are updated annually in the Texas Credit Letter." Conforming changes are proposed to update the rate bracket amounts for Subchapter E loans in the following figures: §90.203(b)(7)(A), (b)(7)(C), and (b)(7)(E). The amounts proposed in the figures reflect those published in the March 3, 2015, issue of the *Texas Register*, and the proposed amounts are applicable to loans made July 1, 2015 to June 30, 2016. In addition, the phrase "per year" has been added to figure §90.203(b)(7)(A) after "\$100.00" in two instances to provide clarification.

In figure §90.204(a)(8), the after-maturity interest clause has been removed from the Subchapter E true daily earnings model contract because other provisions allow the lender to charge accrued interest.

Amendments throughout §90.303 are proposed to provide model provisions for Chapter 342, Subchapter F loan contracts using the scheduled installment earnings method and the true daily earnings method. The amendments implement Texas Finance Code, §342.260, enacted by the Texas Legislature in 2013. New §90.303(b)(2)(B) provides the promise to pay for contracts using the true daily earnings method. New §90.303(b)(5)(B) provides the model prepayment clause for contracts using the true daily earnings method, stating that the borrower can make any payment early. New §90.303(b)(6)(C)-(D) include the finance charge earnings and refund method provisions for contracts using the scheduled installment earnings and true daily earnings methods. These provisions include provisions on the order in which the lender will apply payments, in accordance with Texas Finance Code, §342.260(d), as well as a statement that the acquisition charge will be collected on a straight-line basis in accordance with 7 TAC §83.606(i)(2).

Additional proposed amendments throughout §90.303 specify that current provisions apply to contracts using the add-on method. A new model Subchapter F contract using the scheduled installment earnings method, and incorporating the model provisions, is proposed at figure 7 TAC §90.304(a)(8). A new model Subchapter F contract using the true daily earnings method, and incorporating the model provisions, is proposed at figure 7 TAC §90.304(a)(9).

Amendments throughout Chapter 90 are proposed to add the lender's Nationwide Mortgage Licensing System & Registry (NMLS) ID number to the model contracts for Subchapter G secondary mortgages. A recent amendment to Regulation Z, 12 C.F.R. §1026.36(g), requires promissory notes and security documents in mortgage transactions to include the following items: the lender's NMLS ID number, the name of

the individual residential mortgage loan originator, and the originator's NMLS ID number. The official commentary to 12 C.F.R. §1026.36(g) explains that the lender may omit its NMLS ID if it does not have an NMLS ID and is not legally required to obtain one. The lender's NMLS ID, the originator's name, and the originator's NMLS ID have been added to the following model provisions that currently include the lender's contact information: §§90.403(b)(1)(A), (c)(1)(D), 90.503(b)(1)(A), (c)(1)(D), and 90.603(b)(2)(C), (c)(1)(A), (d)(2)(C), (e)(1)(A), (f)(1)(C). Conforming changes have been made to the model contracts in the figures accompanying the following provisions: §§90.404(a)(8)-(9), 90.504(a)(8)-(9), and 90.604(a)(13)-(17). Proposed provisions have been added in the following sections to describe permissible changes allowed under Regulation Z, 12 C.F.R. §1026.36(g) and the official commentary to that section: §§90.404(a)(7), 90.504(a)(7), and 90.604(a)(12). Certain provisions have been renumbered or relettered accordingly.

Amendments throughout Chapter 90 are proposed to ensure conformity with the TILA-RESPA integrated disclosures required under recent amendments to Regulation Z, 12 C.F.R. §§1026.19, 1026.37, and 1026.38. One of the integrated disclosures is the Closing Disclosure, a form that integrates and replaces the HUD-1 settlement statement required under the Real Estate Settlement Procedures Act and the final Truth in Lending Act disclosure. The Consumer Financial Protection Bureau (CFPB) has adopted model forms for the Closing Disclosure, which must be provided to the consumer at least three days before consummation of the loan. The new requirements will go into effect on October 3, 2015.

Four types of changes have been proposed to ensure conformity with the TILA-RESPA integrated disclosures. First, the box containing the final TILA disclosure has been removed from the Subchapter G model contracts, because this disclosure has been replaced with the CFPB's Closing Disclosure, which must be provided separately. Second, the payment schedule that is currently in the final TILA disclosure has been moved into the promise to pay. Third, the statement that there is no prepayment penalty, which is currently in the final TILA disclosure, has been moved into the provisions on the finance charge earnings and refund method. Fourth, in the model provisions for promissory notes for home improvement loans, the description of the property subject to the lien has been moved into the provision on security for payment. The following provisions and accompanying figures relating to the final TILA disclosure have been deleted: §§90.402(a)(2)-(3), 90.403(b)(2)-(3), 90.502(a)(2)-(3), 90.503(b)(1)-(3), 90.602(2)(B)-(C), (4)(B)-(C), and 90.603(c)(2)-(3), (e)(2)-(3). Certain provisions have been renumbered or relettered accordingly. Amendments and new figures are proposed in the following sections to add the payment schedule to the promise to pay: §§90.403(b)(2)(C), 90.503(b)(2)(C), and 90.603(c)(4)(C), (e)(4)(C). Amendments are proposed to the following provisions and accompanying figures to add a statement that there is no prepayment penalty: §§90.403(b)(6), 90.503(b)(6), and 90.603(c)(8), (e)(8). Amendments are proposed to the following provisions to add the property description to the clause on security for payment: §§90.603(c)(2) and (e)(2). Conforming changes have been made to the model contracts in the figures accompanying the following provisions: §§90.404(a)(8), 90.504(a)(8), and 90.604(a)(14), (16). New provisions are proposed in the following sections to specify that the model provisions are separate from the TILA-RESPA integrated disclosures: §§90.402(c), 90.502(c), and 90.603(b).

Amendments throughout Chapter 90 are proposed to ensure conformity with the provision on late charges for high-cost mortgage loans in Regulation Z, 12 C.F.R. §1026.34(a)(8). Regulation Z limits the late charge for high-cost mortgage loans to 4% of a scheduled payment. This is less than the 5% limitation that generally applies to secondary mortgage loans under Texas Finance Code, §342.302(e). Amendments to the following provisions are proposed to describe the late charge limitation for high-cost mortgages, in addition to the general limitation: §§90.403(b)(3), 90.503(b)(3), and 90.603(c)(5), (e)(5). Conforming changes have been made to the model contracts in the figures accompanying the following provisions: §§90.404(a)(8), 90.504(a)(8), and 90.604(a)(14), (16).

A proposed amendment to §90.604(a)(1) provides an updated citation to the CFPB's model form for the right of rescission notice required for mortgage loans under Regulation Z, 12 C.F.R. §1026.23(b).

Amendments related to Spanish disclosures are proposed in §90.701, to provide clarity regarding which forms must be provided, and to conform to proposed §90.703. Proposed §90.703 replaces the current version of this section, which is being repealed. Subsection (a) provides that for a Chapter 342 loan negotiated in Spanish, the licensee must provide a Spanish disclosure, and that the disclosure must be completed with amounts that are accurate within the tolerances described by Regulation Z, 12 C.F.R. Part 1026. Paragraph (1) provides that for a Subchapter E loan, the lender may provide either a Spanish translation of the loan contract or the "Notificación de Crédito Al Consumidor (Préstamo a Plazos)" (a figure that is renumbered without changes from current §90.703(a)(2)). Paragraph (2) provides that for a Subchapter F loan, the lender may provide either a Spanish translation of the loan contract or both of the following: the "Notificación de Crédito Al Consumidor (Préstamo)" (a figure that is renumbered without changes from current §90.703(a)(3)(A)) and the "Conceptos Financieros" (a figure that is renumbered without changes from current §90.703(a)(3)(B)). Paragraph (3) provides that for a Subchapter G secondary mortgage loan, the lender must provide copies of the CFPB's Spanish translations of both the TILA-RESPA integrated disclosures. This paragraph replaces the current provision and accompanying figure located at §90.703(a)(4), the "Notificación de Crédito Al Consumidor (Préstamo de Segunda Hipoteca)."

Subsection (b) provides that for a Chapter 348 transaction, the creditor may provide a Spanish translation of the retail installment sales contract or the "Notificación de Crédito Al Consumidor (Contrato de Menudeo a Plazos para Vehículo Automotor)" (a figure that is renumbered without changes from current §90.703(a)(5)). Subsection (c) provides that a licensee may delete inapplicable provisions of the model disclosures, except for the TILA-RESPA integrated disclosures required under subsection (a)(3). In addition, the two Subchapter E loan contracts and the three Subchapter F loan contracts include an updated statement (in both English and Spanish) acknowledging that the borrower received a summary of the contract in Spanish. This statement is included in the following figures: §90.204(a)(7)-(8) and §90.304(a)(7)-(9).

The provisions relating to Spanish disclosures are proposed under Texas Finance Code, §341.502(a-1), which provides that if the terms of a Chapter 342 loan are negotiated in Spanish, "a copy of a summary of those terms and other pertinent information shall be provided to the debtor in Spanish in a form identical to disclosures required for a closed-end transaction under

12 C.F.R. Section 226.18." The provisions are intended to ensure that the Spanish disclosures are in the same form as the disclosures required under Regulation Z, which has been recodified from 12 C.F.R. Part 226 to 12 C.F.R. Part 1026.

The remaining amendments proposed throughout the rules relate to improvements in consistency, clarity, grammar, punctuation, and formatting. Any rules not included in this proposal will be maintained in their current form.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments to these rules 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 these rules 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 more efficiency, will comply with state and federal regulations, and will be more easily understood and enforced. Another public benefit of these rule amendments will be increased uniformity and consistency in credit contracts.

Additional economic costs will be incurred by a person required to comply with this proposal. These costs, in part, are required by the Consumer Financial Protection Bureau (CFPB) due to its promulgation of the TILA-RESPA integrated disclosures. The proposed amendments to update these disclosures serve to implement the CFPB's regulations.

Other additional economic costs will be incurred in order for licensees to comply with the updated OCCC notice, updated legal citations, revised non-standard contract filing procedure, and other changes contained in the plain language contracts. The OCCC believes that the proposed amendments are necessary so that consumers and creditors will have the most current contact information for the OCCC, as well as contracts that reflect recent updates in state and federal law.

For those who will be required to comply with the proposed amendments, the anticipated costs would include the costs associated with producing new forms, and costs attributable to the loss of obsolete forms inventory. The agency seeks to minimize these costs by allowing licensees to use the current forms for 13 months after these amendments become effective. The costs to produce new forms are estimated to be approximately \$0.45-\$0.55 per contract or new form.

For those licensees who have non-standard contract submissions on file with the agency, there will be anticipated costs in order for those licensees to submit new filings in accordance with the proposed changes. The anticipated costs would include expenses related to employee training to review the updated submission procedure, to prepare and submit the new non-standard contract filing, and to implement the revised contracts. These costs will vary widely among licensees depending on the number of employees who must be trained, as well as the labor costs associated with supervisors or other personnel assigned to create or maintain a licensee's non-standard contracts.

Some licensees who use or lease specialized computer software programs for their loan 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 program-

mers will charge an additional fee for a document they do not have to draft is also not predictable.

Licensees will have the ability to offset the anticipated costs of these proposed amendments due to several mechanisms currently in place that allow licensees to collect fees related to document preparation and the administrative costs of doing business. For regulated lenders that operate under Subchapters E and F of Chapter 342, statutory and rule changes made during 2013 provide for the collection of increased acquisition and administrative fees. In addition, mortgage lenders are authorized to charge a fee for document preparation, which can be adjusted to cover increased costs.

The agency is not aware of any adverse economic effect on small businesses as compared to the effect on large businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule amendments, the agency invites comments from interested stakeholders and the public on any economic impact on small businesses, as well as any alternative methods of achieving the purpose of these proposed amendments should that effect be adverse to 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.texas.gov. 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 rules contained in Chapter 90 provide model clauses and model contracts. Licensees are not required to adopt the model language contained in the rules. For those licensees utilizing the model contracts, the prior model language is acceptable and the agency will permit licensees to use the prior model language (without a non-standard contract submission) until December 31, 2016, to deplete supplies of existing forms during a 13-month transition period after the anticipated effective date of the rules.

For those licensees performing mortgage transactions subject to the federal TILA-RESPA integrated disclosures, compliance with federal law should be completed in accordance with any guidance or deadlines issued by the CFPB.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§90.101 - 90.105

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.

All of the plain language amendments are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of contracts for a loan under Chapter 342, a retail installment transaction under Chapter 348, or a home equity loan regulated by the Office of Consumer Credit Commissioner.

The amendments regarding the OCCC notice are proposed under Texas Finance Code, §14.104, which requires that a written contract of an authorized lender subject to the OCCC's regulation must contain the name, mailing address, and telephone number of the office. The OCCC believes that a modernized in-

terpretation of §14.104 would include the agency's updated website and email address.

The regulated lender amendments are proposed under Texas Finance Code, §342.551 which grants the commission the authority to adopt rules to enforce the consumer loans chapter.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapters 342 and 348.

§90.101. *Definitions.*

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

(1) - (5) (No change.)

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

(7) [~~(6)~~] Prepayment--Any whole or partial payment of an amount equal to one or more full installments made by the borrower prior to the date the payment is due.

(8) [~~(7)~~] Security--An interest in personal property which serves to secure the payment or performance of an obligation. See "Collateral."

§90.102. *Relationship with Federal Law.*

In the event of an inconsistency or conflict between the disclosure or notice requirements in these provisions and any current or future federal law, regulation, or interpretation, the requirements of the federal law, regulation, or interpretation will control to the extent of the inconsistency. The remainder of the contract will remain in full force and effect. Use of the Consumer Financial Protection Bureau's [Federal Reserve Board's] promulgated model forms complies with the Truth in Lending requirements of this chapter.

§90.103. *Format.*

(a) Plain language contracts must be printed in an easily readable font and type size pursuant to Texas Finance Code, §341.502(a). If other state or federal law requires a different type size for a specific disclosure or contractual provision, the type size specified by the other law should be used.

(b) The text of the document must be set in an easily readable typeface. Typefaces considered to be readable include: Arial, Calibri, Caslon, Century Schoolbook, Garamond, Helvetica, Scala, and Times New Roman [Times, Seala, Caslon, Century Schoolbook, Helvetica, Arial, and Garamond].

(c) Titles, headings, subheadings, numbering, captions, and illustrative or explanatory tables or sidebars may be used to distinguish between different levels of information or to provide emphasis.

(d) Typeface size is referred to in points. Because different typefaces in the same point size are not of equal size, typeface is not strictly defined but is expressed as a minimum size in the Times New Roman typeface for visual comparative purposes. Use of a larger typeface is encouraged. The typeface for the federal disclosure box or other disclosures required under federal law must be legible, but no minimum typeface is required. Generally, the typeface for the remainder of the contract must be at least as large as 8 point in the Times New Roman typeface. A point is generally viewed as 1/72nd of an inch.

§90.104. *Non-Standard Contract Filing Procedures.*

(a) Non-standard contracts. A non-standard contract is a contract that does not use the model contract provisions. Non-standard contracts submitted in compliance with the provisions of Texas Finance Code, §341.502(c) will be reviewed to determine that the contract is

written in plain language. [Non-standard contracts submitted for review may gain certain protections under the provisions of Texas Finance Code, §341.502.]

(b) Certification of readability. Contract filings subject to this chapter must be accompanied by a certification signed by an officer of the licensee or the entity submitting the form on behalf of the licensee. The certification must state that the contract is written in plain language and [(i.e.,] that the contract can be easily understood by the average consumer[)]. The certification must also state that the contract is printed in an easily readable font and type size, including a list of the typefaces used in the contract, the font sizes used in the contract, and the Flesch-Kincaid Grade Level score of the contract The OCCC will prescribe the form of the certification.

(c) Filing requirements. Contract filings must be identified as to the transaction type. Contract filings must be submitted in accordance with the following requirements:

(1) Microsoft Word format. One copy must be submitted in a Microsoft Word format with the document having either a .doc or .docx extension. The Flesch-Kincaid Grade Level score of the contract must be based on the Microsoft Word readability statistics function for the Microsoft Word version of the contract.

(2) PDF format. One copy must be submitted in a PDF format so that the contract may be visually reviewed in its entirety.

(3) No other formats permitted. The OCCC will not accept paper filings or any other unlisted formats for non-standard contract filings.

(4) Maximum Flesch-Kincaid score. The maximum Flesch-Kincaid Grade Level scores for Chapter 342 contract filings are:

(A) grade 8 for Subchapter F (signature loans);

(B) grade 9 for Subchapter E (secured installment loans);

(C) grade 10 for Subchapter G, computed by scoring the note and security document in one continuous Microsoft Word document (home equity loans, second lien purchase money loans, and second lien home improvement contracts). [on paper that is suitable for permanent record storage and imaging. Handwritten forms or handwritten corrections will not be accepted. In addition to the paper submission, the licensee must also submit the contract filings in an electronic version. The electronic version must be submitted in a Corel WordPerfect (-wpd), MS Word (-.doc), or a text (-.txt) format.]

(d) Contact person. One person shall be designated as the contact person for each filing submitted. Each submission should provide the name, address, phone number, and fax number, if available, of the contact person for that filing. If the contracts are submitted by anyone other than the licensee itself, the contracts must be accompanied by a dated letter which contains a description of the anticipated users of the contracts and designates the legal counsel or other designated contact person for that filing.

§90.105. OCCC [Complaints and Inquiries] Notice.

(a) (No change.)

(b) Required notice.

(1) The following notice must be given by licensees to let consumers know how to file complaints: "For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Com-

missioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov." ["The (your name) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (your name) should contact the Office of Consumer Credit Commissioner through one of the means indicated below: In Person or U.S. Mail: 2601 North Lamar Boulevard, Austin, Texas 78705-4207. Telephone No.: (800) 538-1579. Fax No.: (512) 936-7610. E-mail: consumer.complaints@occc.state.tx.us. Website: www.occc.state.tx.us."]

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

(5) The notice described by paragraph (1) must be included [In addition to the notice required to be included on each privacy notice, a notice is also required] on each loan contract of a licensee pursuant to Texas Finance Code, §14.104.

{(A) The text of the notice required by paragraph (4) of this subsection is acceptable to meet this requirement; or}

{(B) A licensee may use the following notice: "This lender is licensed and examined by the State of Texas - Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems. Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, (800) 538-1579, www.occc.state.tx.us."}

(6) The lender's phone number may be printed in conjunction with the lender's name and address elsewhere on the privacy notice or loan contract if the notice described by paragraph (1) is amended to direct the reader's attention to the area of the document where the phone number may be found.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 936-7621



SUBCHAPTER B. SECURED CONSUMER INSTALLMENT LOANS (SUBCHAPTER E)

7 TAC §§90.201 - 90.204

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

All of the plain language amendments are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of contracts for a loan under Chapter 342, a retail installment transaction under Chapter 348, or a home equity loan regulated by the Office of Consumer Credit Commissioner.

The amendments regarding the OCCC notice are proposed under Texas Finance Code, §14.104, which requires that a written contract of an authorized lender subject to the OCCC's regulation must contain the name, mailing address, and telephone number of the office. The OCCC believes that a modernized interpretation of §14.104 would include the agency's updated website and email address.

The regulated lender amendments are proposed under Texas Finance Code, §342.551 which grants the commission the authority to adopt rules to enforce the consumer loans chapter.

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

§90.201. Purpose.

(a) The purpose of the rules contained in this subchapter is to provide [a] model plain language contracts [~~contract~~] in English for Texas Finance Code, Chapter 342, Subchapter E transactions. The establishment of model provisions for these transactions will encourage use of simplified wording that will ultimately benefit consumers by making these contracts easier to understand. The use of the "plain language" model contract by a licensee is not mandatory. The licensee, however, may not use a contract other than a model contract unless the licensee has submitted the contract to the OCCC [~~commissioner~~] in compliance with §90.104 of this title (relating to Non-Standard Contract Filing Procedures). The OCCC [~~commissioner~~] will issue an order disapproving the contract if the OCCC [~~commissioner~~] determines the contract does not comply with Texas Finance Code, §341.502 or rules adopted under this chapter. A licensee may not claim the OCCC's [~~commissioner's~~] failure to disapprove a contract constitutes an approval.

(b) (No change.)

§90.202. Contract Provisions.

A Chapter 342, Subchapter E contract may include, but is not limited to, the following contract provisions to the extent not prohibited by law or regulation. If the licensee desires to exercise its rights under one of the following provisions, it must include the provision in the contract. A licensee who does not desire to apply a provision is not required to include it in the contract. For example, if a licensee does not take a security interest in the borrower's personal property, the provisions addressing security interests are not required. A licensee may also exclude non-relevant portions of a model clause. For example, a licensee who does not routinely finance certain insurance coverages may omit those non-applicable portions of the model clause. A Chapter 342, Subchapter E contract may contain the following provisions:

(1) - (22) (No change.)

(23) OCCC [Complaints and inquiries] notice.

§90.203. Model Clauses.

(a) (No change.)

(b) Model clauses for a Chapter 342, Subchapter E secured consumer installment loan contract.

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

(5) After maturity interest. The after maturity interest model clause for contracts using the scheduled installment earnings method reads: "If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due."

(6) (No change.)

(7) Finance charge earnings and refund method. The model finance charge earnings and refund method clauses include rate bracket amounts that are updated annually in the Texas Credit Letter. The model finance charge earnings and refund method clause options read:

(A) For contracts using the scheduled installment earnings method, Texas Finance Code, §342.201(a):
Figure: 7 TAC §90.203(b)(7)(A)

(B) (No change.)

(C) For contracts using the scheduled installment earnings method, Texas Finance Code, §342.201(e):
Figure: 7 TAC §90.203(b)(7)(C)

(D) (No change.)

(E) For contracts using the true daily earnings method, Texas Finance Code, §342.201(e):
Figure: 7 TAC §90.203(b)(7)(E)

(8) - (23) (No change.)

(24) OCCC [Complaints and inquiries] notice. Under §90.105 of this title (relating to OCCC [Complaints and inquiries] Notice), the following required notice must be given by licensees to let consumers know how to file complaints: "For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov." ["This lender is licensed and examined by the State of Texas - Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, www.occc.state.tx.us, (800) 538-1579."]

(25) - (26) (No change.)

§90.204. Permissible Changes.

(a) A licensee may consider making the following types of changes to the secured consumer installment loans plain language model clauses:

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

(7) A sample model contract using the scheduled installment earnings method is presented in the following example.
Figure: 7 TAC §90.204(a)(7)

(8) A sample model contract using the true daily earnings method is presented in the following example.
Figure: 7 TAC §90.204(a)(8)

(9) (No change.)

(b) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2015.

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Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 936-7621

SUBCHAPTER C. SIGNATURE LOANS (SUBCHAPTER F)

7 TAC §§90.301 - 90.304

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.

All of the plain language amendments are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of contracts for a loan under Chapter 342, a retail installment transaction under Chapter 348, or a home equity loan regulated by the Office of Consumer Credit Commissioner.

The amendments regarding the OCCC notice are proposed under Texas Finance Code, §14.104, which requires that a written contract of an authorized lender subject to the OCCC's regulation must contain the name, mailing address, and telephone number of the office. The OCCC believes that a modernized interpretation of §14.104 would include the agency's updated website and email address.

The regulated lender amendments are proposed under Texas Finance Code, §342.551 which grants the commission the authority to adopt rules to enforce the consumer loans chapter.

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

§90.301. Purpose.

(a) The purpose of the rules contained in this subchapter is to provide [a] model plain language contracts [contract] in English for Texas Finance Code, Chapter 342, Subchapter F transactions. The establishment of model provisions for these transactions will encourage use of simplified wording that will ultimately benefit consumers by making these contracts easier to understand. The use of the "plain language" model contract by a licensee is not mandatory. The licensee, however, may not use a contract other than a model contract unless the licensee has submitted the contract to the OCCC [commissioner] in compliance with §90.104 of this title (relating to Non-Standard Contract Filing Procedures). The OCCC [commissioner] will issue an order disapproving the contract if the OCCC [commissioner] determines the contract does not comply with Texas Finance Code, §341.502 or rules adopted under this chapter. A licensee may not claim the OCCC's [commissioner's] failure to disapprove a contract constitutes an approval.

(b) (No change.)

§90.302. Contract Provisions.

A Chapter 342, Subchapter F contract may include, but is not limited to, the following contract provisions to the extent not prohibited by law or regulation. If the licensee desires to exercise its rights under one of the following provisions, it must include the provision in the contract. A licensee who does not desire to apply a provision is not required to include it in the contract. For example, if a licensee does not take a

security interest in the borrower's personal property, the provisions addressing security interests are not required. A Chapter 342, Subchapter F contract may contain the following provisions:

- (1) - (21) (No change.)
- (22) OCCC [Complaints and inquiries] notice.
- (23) - (24) (No change.)

§90.303. *Model Clauses.*

(a) (No change.)

(b) Model clauses for a Chapter 342, Subchapter F signature loan contract.

(1) (No change.)

(2) Promise to pay. The model clause for the borrower's promise to pay reads:

(A) For contracts using the add-on method or the scheduled installment earnings method: "I promise to pay the Total of Payments to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(B) For contracts using the true daily earnings method: "I promise to pay the unpaid principal balance plus the accrued interest to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(3) Late charge. The late charge model provisions in this paragraph may be used for loans that are regular transactions under Texas Finance Code, §342.001(2). At the licensee's option, the late charge clause may be made applicable only to loans with more than one installment. As other options, a licensee may include one of the model late charge clause options, as set out in subparagraphs (A) and (B) of this paragraph, in both single and multiple installment loans, so long as the licensee does not collect a default charge on a single payment loan or omit the late charge clause for loans with a single repayment. The licensee may use one of the following late charge model provisions:

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

(4) After maturity interest. The after maturity interest model clause for contracts using the add-on method reads: "If I don't pay all I owe by the date the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be at a rate of 18% per year and will begin the day after the final payment becomes due."

(5) Prepayment clause. The model prepayment clause reads:

(A) For contracts using the add-on method or the scheduled installment earnings method: "I can make a whole payment early."

(B) For contracts using the true daily earnings method: "I can make any payment early."

(6) Finance charge earnings and refund method.

(A) Add-on method. For contracts using the add-on method, the [The] model finance charge earnings and refund method clause reads: "The acquisition charge on this loan will not be refunded if I pay off early. If I pay all I owe before the beginning of the last monthly period, I will save part of the installment account handling charge. You will figure the amount I save by the sum of the periodic balances method. This method is explained in the Finance Commission rules. You don't have to refund or credit any amount less than \$1.00."

(B) Add-on method for loans of \$30 or less. At the licensee's option, the licensee may include the following model finance charge and refund method language if the licensee makes loans of \$30 or less using the add-on method: "The acquisition charge on this loan will not be refunded if I pay off early. If this loan is for more than \$30 and I pay all I owe before the beginning of the last monthly period, I will save part of the installment account handling charge. You will figure the amount I save by the sum of the periodic balances method. This method is explained in the Finance Commission rules. You don't have to refund or credit any amount less than \$1.00."

(C) Scheduled installment earnings method. For contracts using the scheduled installment earnings method, the model finance charge earnings and refund method clause reads: "The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the interest charge (also called the installment account handling charge) by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid principal balance. At the start of the loan, the unpaid principal balance equals the Amount Financed. The unpaid principal balance does not include the acquisition charge, the interest charge, late charges, charges to extend a payment, or returned check fees. You calculate the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply each of my payments in this order: (1) part of the acquisition charge (figured on a straight-line basis under Finance Commission rules), (2) late charges, (3) returned check fees, (4) accrued interest, and (5) the unpaid principal balance. If I pay off the loan in full early, I may save part of the interest charge. However, you can still collect the unpaid acquisition charge, and the acquisition charge will not be refunded. You don't have to refund or credit any amount less than \$1.00."

(D) True daily earnings method. For contracts using the true daily earnings method, the model finance charge earnings and refund method clause reads: "The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the interest charge (also called the installment account handling charge) by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid principal balance. At the start of the loan, the unpaid principal balance equals the Amount Financed. The unpaid principal balance does not include the acquisition charge, the interest charge, late charges, charges to extend a payment, or returned check fees. You calculate the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. You will apply each of my payments in this order: (1) part of the acquisition charge (figured on a straight-line basis under Finance Commission rules), (2) late charges, (3) returned check fees, (4) accrued interest, and (5) the unpaid principal balance. If I pay off the loan in full early, you can still collect the unpaid acquisition charge, and the acquisition charge will not be refunded."

(7) Deferment clause. The deferment model clause for contracts using the add-on method reads: "If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules."

(8) - (20) (No change.)

(21) OCCC [Complaints and inquiries] notice. Under §90.105 of this title (relating to OCCC [Complaints and Inquiries] Notice), the following required notice must be given by licensees to let consumers know how to file complaints: "For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the

following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov. ["This lender is licensed and examined by the State of Texas - Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207; www.occc.state.tx.us; (800) 538-1579."]

(22) (No change.)

§90.304. *Permissible Changes.*

(a) A licensee may consider making the following types of changes to the signature loans plain language model clauses:

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

(7) A sample model contract using the add-on method is presented in the following example.
Figure: 7 TAC §90.304(a)(7)

(8) A sample model contract using the scheduled installment earnings method is presented in the following example.
Figure: 7 TAC §90.304(a)(8)

(9) A sample model contract using the true daily earnings method is presented in the following example.
Figure: 7 TAC §90.304(a)(9)

(10) [(8)] A sample model security agreement is presented in the following example.
Figure: 7 TAC §90.304(a)(10)
[Figure: 7 TAC §90.304(a)(8)]

(b) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 936-7621



SUBCHAPTER D. SECOND LIEN HOME EQUITY LOANS (SUBCHAPTER G)

7 TAC §§90.401 - 90.404

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

All of the plain language amendments are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of contracts for a loan under Chapter 342, a retail installment transaction under Chapter 348,

or a home equity loan regulated by the Office of Consumer Credit Commissioner.

The amendments regarding the OCCC notice are proposed under Texas Finance Code, §14.104, which requires that a written contract of an authorized lender subject to the OCCC's regulation must contain the name, mailing address, and telephone number of the office. The OCCC believes that a modernized interpretation of §14.104 would include the agency's updated website and email address.

The regulated lender amendments are proposed under Texas Finance Code, §342.551 which grants the commission the authority to adopt rules to enforce the consumer loans chapter.

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

§90.401. *Purpose.*

(a) The purpose of the rules contained in this subchapter is to provide a model plain language contract in English for Texas Finance Code, Chapter 342, Subchapter G (secondary mortgage loans with an effective rate of greater than 10%) home equity loan transactions. The establishment of model provisions for these transactions will encourage use of simplified wording that will ultimately benefit consumers by making these contracts easier to understand. Use of the "plain language" model contract by a licensee is not mandatory. The licensee, however, may not use a contract other than a model contract unless the licensee has submitted the contract to the OCCC [e~~ommissioner~~] in compliance with §90.104 of this title (relating to Non-Standard Contract Filing Procedures). The OCCC [e~~ommissioner~~] will issue an order disapproving the contract if the OCCC [e~~ommissioner~~] determines the contract does not comply with Texas Finance Code, §341.502 or rules adopted under this chapter. A licensee may not claim the OCCC's [e~~ommissioner's~~] failure to disapprove a contract constitutes an approval.

(b) (No change.)

§90.402. *Contract Provisions.*

(a) A Chapter 342, Subchapter G home equity loan contract may include, but is not limited to, the following contract provisions to the extent not prohibited by law or regulation. If the licensee desires to exercise its rights under one of the following provisions, it must include that provision in the contract. A licensee who does not desire to apply a provision is not required to include it in the contract. For example, a licensee who does not assess a fee for dishonored checks may omit the fee for dishonored check clause. A licensee may also exclude non-relevant portions of a model clause. For example, a licensee who does not routinely finance certain insurance coverages may omit those non-applicable portions of the model clause. A Chapter 342, Subchapter G second lien home equity loan contract may contain the following provisions:

(1) Identification of the parties, including the name and address of each party and specifying the pronouns that designate the borrower and the lender;

[(2) A Truth in Lending Act disclosure box;]

[(3) An itemization of amount financed box;]

(2) [(4)] A promise to pay;

(3) [(5)] A late charge provision;

(4) [(6)] A provision for after maturity interest;

(5) [(7)] A prepayment clause;

(6) [(8)] A provision specifying the finance charge earnings and refund method;

(7) [(9)] A provision contracting for a fee for a dishonored check;

(8) [(10)] A provision specifying the conditions causing default;

(9) [(11)] A provision regarding property insurance;

(10) [(12)] A credit insurance disclosure box;

(11) [(13)] A provision regarding the mailing of notices to the borrower;

(12) [(14)] A provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration;

(13) [(15)] A provision expressing no waiver of the lender's rights;

(14) [(16)] A collection expenses clause;

(15) [(17)] A provision providing for joint liability;

(16) [(18)] A usury savings clause;

(17) [(19)] A savings clause stating that if any part of the loan agreement is invalid, the rest remains valid;

(18) [(20)] An integration clause stating that the contract supersedes all prior agreements and that the contract may not be changed by oral agreement;

(19) [(21)] A provision stating that the homestead described in the loan agreement is subject to the lien of the security document;

(20) [(22)] A provision specifying that federal law and Texas law apply to the contract;

(21) [(23)] OCCC [Complaints and inquiries] notice;

(22) [(24)] A provision describing the collateral; and

(23) [(25)] Signature blocks.

(b) (No change.)

(c) The provisions described in this section are separate from the TILA-RESPA integrated disclosures required under Regulation Z, 12 C.F.R. §§1026.19, 1026.37 and 1026.38.

§90.403. *Model Clauses.*

(a) (No change.)

(b) Model clauses for a Chapter 342, Subchapter G second lien home equity loan contract.

(1) Identification.

(A) The model identification clause lists the account or contract number, the name and address of the lender, the date of the note, and the name and address of the borrower. It also lists the following items that must be included on the promissory note under Regulation Z, 12 C.F.R. §1026.36(g):

(i) the lender's Nationwide Mortgage Licensing System and Registry identification number (labeled "Creditor/Lender NMLS ID");

(ii) the name of the individual residential mortgage loan originator with primary responsibility for the origination (labeled "Loan Originator"); and

(iii) the originator's Nationwide Mortgage Licensing System and Registry identification number (labeled "Loan Originator NMLS ID").

(B) The model clause identifying the pronouns used for the borrower and the lender reads: "A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder." The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments."

{(2) Truth in Lending Act disclosure box. The model Truth in Lending Act disclosure box reads:} [Figure: 7 TAC §90.403(b)(2)]

{(3) Itemization of amount financed box. The itemization of amount financed box is not required if the licensee provides the borrower with a good faith estimate or a settlement statement as permitted by the Truth in Lending Act. An itemization of amount financed box which complies with Regulation Z is considered to be in compliance with this paragraph and will not require a non-standard submission.}

(2) [(4)] Promise to pay. One permissible change to the model language for the scheduled installment earnings method would be to allow partial prepayments of the principal during the term of the loan. This variation on the Texas scheduled installment earnings method would allow periodic reductions of the principal balance by partial prepayments. This variation would allow reductions of the principal balance that were not originally scheduled. The model clause for the borrower's promise to pay reads: "This loan is an Extension of Credit defined by Section 50(a)(6), Article XVI of the Texas Constitution."

(A) For contracts using the scheduled installment earnings method: "I promise to pay the Total of Payments to the order of you. (The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date).) I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(B) For contracts using the true daily earnings method: "I promise to pay the cash advance plus the accrued interest to the order of you. (The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date).) I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(C) The model payment schedule reads: [Figure: 7 TAC §90.403(b)(2)(C)]

(3) [(5)] Late charge.

(A) Generally. The general model late charge provision for contracts using the scheduled installments earnings method or the true daily earnings method reads: "If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."

(B) High-cost mortgage loans. The model late charge provision for high-cost mortgage loans subject to the limitation on late charges in Regulation Z, 12 C.F.R. §1026.34(a)(8), reads: "If I don't pay all of a payment within 15 days after it is due, you can charge me a late charge. The late charge will be 4% of the scheduled payment."

(4) [(6)] After maturity interest. The model provision for after maturity interest reads: "If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still

unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due."

(5) [(7)] Prepayment clause. The model prepayment clause options read:

(A) For contracts using the scheduled installment earnings method: "I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(B) For contracts using the true daily earnings method: "I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(6) [(8)] Finance charge earnings and refund method. The model provision options specifying the finance charge earnings and refund method read:

(A) For contracts using the scheduled installment earnings method - Section 342.301 rate loans, the model language reads:
Figure: 7 TAC §90.403(b)(6)(A)
[Figure: 7 TAC §90.403(b)(8)(A)]

(B) For contracts using the scheduled installment earnings method with prepayments option - Section 342.301 rate loans, the model language reads:
Figure: 7 TAC §90.403(b)(6)(B)
[Figure: 7 TAC §90.403(b)(8)(B)]

(C) For contracts using the true daily earnings method - Section 342.301 rate loans, the model language reads:
Figure: 7 TAC §90.403(b)(6)(C)
[Figure: 7 TAC §90.403(b)(8)(C)]

(7) [(9)] Fee for dishonored check clause. The model clause specifies the maximum allowable dishonored check fee. A licensee may always choose a lesser amount. The fee for dishonored check model clause reads: "I agree to pay you a fee of up to \$30 for a returned check. You may add the fee to the amount I owe or collect it separately."

(8) [(10)] Default clause. The model provision specifying the conditions causing default reads:
Figure: 7 TAC §90.403(b)(8)
[Figure: 7 TAC §90.403(b)(10)]

(9) [(11)] Property insurance. The model provision regarding property insurance reads:
Figure: 7 TAC §90.403(b)(9)
[Figure: 7 TAC §90.403(b)(11)]

(10) [(12)] Credit insurance. If single premium credit insurance is allowable, a permissible change to the disclosure can be to offer a single charge for the entire term of the loan. The term for the single premium charge should be shown for the original term of the loan, unless otherwise specified. The licensee has the option of including language that reads: "The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium." The industry standard regarding the relationship between total past due premiums and the first month's premium in this equation appears to be four times. However, if a different time frame is more appropriate, that time frame may be used. The model credit insurance disclosure box reads:
Figure: 7 TAC §90.403(b)(10)
[Figure: 7 TAC §90.403(b)(12)]

(11) [(13)] Mailing of notices to borrower. The model provision regarding the mailing of notices to the borrower reads: "You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it by first class mail."

(12) [(14)] Due on sale clause, notice of intent to accelerate, and notice of acceleration. The model provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration reads: "If all or any interest in the homestead is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law. If you exercise this option, you will give me notice of acceleration (i.e., payment of all I owe at once). This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement."

(13) [(15)] No waiver of lender's rights. The model provision expressing no waiver of the lender's rights reads: "If you don't enforce your rights every time, you can still enforce them later."

(14) [(16)] Collection expenses clause. The model collection expenses clause reads: "If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by law, including Section 50(a)(6), Article XVI of the Texas Constitution. These expenses include, for example, reasonable attorneys' fees. I understand that these fees are not for maintaining or servicing this Loan Agreement."

(15) [(17)] Joint liability. The model provision providing for joint liability reads: "I understand that you may seek payment from only me without first looking to any other Borrower. You can enforce your rights under this Loan Agreement solely against the homestead. This Loan Agreement is made without personal liability against each owner of the homestead and the spouse of each owner unless the owner or spouse obtained this loan by actual fraud. If this loan is obtained by actual fraud, I will be personally liable for the debt, including a judgment for any deficiency that results from your sale of the homestead for an amount less than is owed under this Loan Agreement."

(16) [(18)] Usury savings clause. The model usury savings clause reads: "I do not have to pay interest or other amounts that are more than the law allows."

(17) [(19)] Savings clause. The model savings clause stating that if any part of the contract is invalid, the rest remains valid reads: "If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with any law will be modified to comply with the law. The rest of the Loan Agreement remains valid."

(18) [(20)] Contract supersedes prior agreements. For loan agreements exceeding \$50,000, this notice must be boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material to be conspicuous. The model integration clause providing that the contract supersedes prior agreements reads: "This written Loan Agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this Loan Agreement. Any change to this Loan Agreement must be in writing. Both you and I have to sign written agreements."

(19) [(21)] Security document. The model provision stating that the homestead described in the loan agreement is subject to the

lien of the security document reads: "The homestead described above by the property address is subject to the lien of the Security Document. I will see the separate Security Document for more information about my rights and responsibilities."

(20) [(22)] Application of law. The model clause specifying that federal law and Texas law apply to the contract reads: "Federal law and Texas law apply to this Loan Agreement. The Texas Constitution will be applied to resolve any conflict between the Texas Constitution and any other law."

(21) [(23)] OCCC [Complaints and inquiries] notice. Under §90.105 of this title (relating to OCCC [Complaints and inquiries] Notice), the following required notice must be given by licensees to let consumers know how to file complaints: "For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov." ["This lender is licensed and examined by the State of Texas - Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems. Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, www.occc.state.tx.us; (800) 538-1579."]

(22) [(24)] Clause describing collateral. The model provision describing the collateral reads: "The homestead described above by the property address is subject to the lien of the Security Document."

(23) [(25)] Signature blocks. The licensee may also provide additional signature lines for witness signatures. The model provision regarding signature blocks reads:
Figure: 7 TAC §90.403(b)(23)
[Figure: 7 TAC §90.403(b)(25)]

(c) Model clauses for the security document for a Chapter 342, Subchapter G second lien home equity loan contract.

(1) The model definitions section reads:

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

(D) "You" means _____, the Lender and any holder entitled to receive payments under the Note. Your address is _____. Your NMLS ID is _____. You are the beneficiary under this Security Document. The loan originator's name is _____. The loan originator's NMLS ID is _____.

(E) - (O) (No change.)

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §§2601-2617 [§2601 et seq.]) and Regulation X (12 C.F.R. Part 1024) [(24 C.F.R. Part 3500)], as [they might be] amended [from time to time], or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Document, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(Q) - (R) (No change.)

(2) - (37) (No change.)

§90.404. *Permissible Changes.*

(a) A licensee may consider making the following types of changes to the second lien home equity loans plain language model clauses:

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

(7) A licensee may place its NMLS ID number, the individual residential mortgage loan originator's name, or the originator's NMLS ID on any portion of a document requiring this information, including the signature page. To the extent allowed by Regulation Z, 12 C.F.R. §1026.36(g), and the official commentary to that section, a licensee may omit:

(A) the licensee's NMLS ID number, if the licensee does not have an NMLS ID number and is not legally required to obtain one; and

(B) the individual residential mortgage loan originator's NMLS ID number, if the originator does not have an NMLS ID number and is not legally required to obtain one.

(8) [(7)] A sample model note is presented in the following example.

Figure: 7 TAC §90.404(a)(8)
[Figure: 7 TAC §90.404(a)(7)]

(9) [(8)] A sample model security document is presented in the following example.

Figure: 7 TAC §90.404(a)(9)
[Figure: 7 TAC §90.404(a)(8)]

(b) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state 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



SUBCHAPTER E. SECOND LIEN PURCHASE MONEY LOANS (SUBCHAPTER G)

7 TAC §§90.501 - 90.504

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.

All of the plain language amendments are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of contracts for a loan under Chapter 342, a retail installment transaction under Chapter 348, or a home equity loan regulated by the Office of Consumer Credit Commissioner.

The amendments regarding the OCCC notice are proposed under Texas Finance Code, §14.104, which requires that a written contract of an authorized lender subject to the OCCC's regulation must contain the name, mailing address, and telephone

number of the office. The OCCC believes that a modernized interpretation of §14.104 would include the agency's updated website and email address.

The regulated lender amendments are proposed under Texas Finance Code, §342.551 which grants the commission the authority to adopt rules to enforce the consumer loans chapter.

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

§90.501. Purpose.

(a) The purpose of the rules contained in this subchapter is to provide a model plain language contract in English for Texas Finance Code, Chapter 342, Subchapter G purchase money loan transactions. The establishment of model provisions for these transactions will encourage use of simplified wording that will ultimately benefit consumers by making these contracts easier to understand. Use of the "plain language" model contract by a licensee is not mandatory. The licensee, however, may not use a contract other than a model contract unless the licensee has submitted the contract to the OCCC [eommissioner] in compliance with §90.104 of this title (relating to Non-Standard Contract Filing Procedures). The OCCC [eommissioner] will issue an order disapproving the contract if the OCCC [eommissioner] determines the contract does not comply with Texas Finance Code, §341.502 or rules adopted under this chapter. A licensee may not claim the OCCC's [eommissioner's] failure to disapprove a contract constitutes an approval.

(b) (No change.)

§90.502. Contract Provisions.

(a) A Chapter 342, Subchapter G purchase money loan transaction may include, but is not limited to, the following contract provisions to the extent not prohibited by law or regulation. If the licensee desires to exercise its rights under one of the following provisions, it must include that provision in the contract. A licensee who does not desire to apply a provision is not required to include it in the contract. For example, a licensee who does not assess a fee for dishonored checks may omit the fee for dishonored check clause. A licensee may also exclude non-relevant portions of a model clause. For example, a licensee who does not routinely finance certain insurance coverages may omit those non-applicable portions of the model clause. A Chapter 342, Subchapter G second lien purchase money loan transaction may contain the following provisions:

(1) Identification of the parties, including the name and address of each party and specifying the pronouns that designate the borrower and the lender, and the property address;

~~[(2) A Truth in Lending Act disclosure box;]~~

~~[(3) An itemization of amount financed box;]~~

~~(2) [(4)] A promise to pay;~~

~~(3) [(5)] A late charge provision;~~

~~(4) [(6)] A provision for after maturity interest;~~

~~(5) [(7)] A prepayment clause;~~

~~(6) [(8)] A provision specifying the finance charge earnings and refund method;~~

~~(7) [(9)] A provision contracting for a fee for a dishonored check;~~

~~(8) [(10)] A provision specifying the conditions causing default;~~

~~(9) [(11)] A provision regarding property insurance;~~

~~(10) [(12)] A credit insurance disclosure box;~~

~~(11) [(13)] A provision regarding the mailing of notices to the borrower;~~

~~(12) [(14)] A provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration;~~

~~(13) [(15)] A provision expressing no waiver of the lender's rights;~~

~~(14) [(16)] A collection expenses clause;~~

~~(15) [(17)] A provision providing for joint liability;~~

~~(16) [(18)] A usury savings clause;~~

~~(17) [(19)] A savings clause stating that if any part of the loan agreement is invalid, the rest remains valid;~~

~~(18) [(20)] An integration clause stating that the contract supersedes all prior agreements and that the contract may not be changed by oral agreement;~~

~~(19) [(21)] A provision stating that the property described in the loan agreement is subject to the lien of the security document;~~

~~(20) [(22)] A provision specifying that federal law and Texas law apply to the contract;~~

~~(21) [(23)]OCCC [Complaints and inquiries] notice;~~

~~(22) [(24)] A provision describing the collateral; and~~

~~(23) [(25)] Signature blocks.~~

(b) (No change.)

(c) The provisions described in this section are separate from the TILA-RESPA integrated disclosures required under Regulation Z, 12 C.F.R. §§1026.19, 1026.37 and 1026.38.

§90.503. Model Clauses.

(a) (No change.)

(b) Model clauses for a Chapter 342, Subchapter G second lien purchase money loan contract.

(1) Identification.

(A) The model identification clause lists the account or contract number, the name and address of the lender, the date of the note, the name and address of the borrower, and the property address. It also lists the following items that must be included on the promissory note under Regulation Z, 12 C.F.R. §1026.36(g):

(i) the lender's Nationwide Mortgage Licensing System and Registry identification number (labeled "Creditor/Lender NMLS ID");

(ii) the name of the individual residential mortgage loan originator with primary responsibility for the origination (labeled "Loan Originator"); and

(iii) the originator's Nationwide Mortgage Licensing System and Registry identification number (labeled "Loan Originator NMLS ID").

(B) The model clause identifying the pronouns used for the borrower and the lender reads: A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder". The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments."

~~{(2) Truth in Lending Act disclosure box. The model Truth in Lending Act disclosure box reads:}~~
~~[Figure: 7 TAC §90.503(b)(2)]~~

~~{(3) Itemization of amount financed box. The itemization of amount financed box is not required if the licensee provides the borrower with a good faith estimate or a settlement statement as permitted by the Truth in Lending Act. An itemization of amount financed box which complies with Regulation Z is considered to be in compliance with this paragraph and will not require a non-standard submission.}~~

~~(2) [(4)] Promise to pay. One permissible change to the model language for the scheduled installment earnings method would be to allow partial prepayments of the principal during the term of the loan. This variation on the scheduled installment earnings method would allow periodic reductions of the principal balance by partial prepayments. This variation would allow reductions of the principal balance that were not originally scheduled. The model clause options for the borrower's promise to pay read:~~

~~(A) For contracts using the scheduled installment earnings method: "I promise to pay the Total of Payments to the order of you. (The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date).) I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule."~~

~~(B) For contracts using the true daily earnings method: "I promise to pay the cash advance plus the accrued interest to the order of you. (The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date).) I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule."~~

~~(C) The model payment schedule reads:~~
~~Figure: 7 TAC §90.503(b)(2)(C)~~

~~(3) [(5)] Late charge.~~

~~(A) Generally. The general model late charge provision for contracts using the scheduled installment earnings method or the true daily earnings method reads: "If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."~~

~~(B) High-cost mortgage loans. The model late charge provision for high-cost mortgage loans subject to the limitation on late charges in Regulation Z, 12 C.F.R. §1026.34(a)(8), reads: "If I don't pay all of a payment within 15 days after it is due, you can charge me a late charge. The late charge will be 4% of the scheduled payment."~~

~~(4) [(6)] After maturity interest. The model clause specifies the maximum interest rate allowed by law for after maturity interest. A licensee may always choose a lower rate. The model provision for after maturity interest reads: "If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due."~~

~~(5) [(7)] Prepayment clause. The model prepayment clause options read:~~

~~(A) For contracts using the scheduled installment earnings method: "I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."~~

~~(B) For contracts using the true daily earnings method: "I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."~~

~~(6) [(8)] Finance charge earnings and refund method. The model provision options specifying the finance charge earnings and refund method read:~~

~~(A) For contracts using the scheduled installment earnings method - Section 342.301 rate loans, the model language reads:~~
~~Figure: 7 TAC §90.503(b)(6)(A)~~
~~[Figure: 7 TAC §90.503(b)(8)(A)]~~

~~(B) For contracts using the scheduled installment earnings method with prepayments option - Section 342.301 rate loans, the model language reads:~~
~~Figure: 7 TAC §90.503(b)(6)(B)~~
~~[Figure: 7 TAC §90.503(b)(8)(B)]~~

~~(C) For contracts using the true daily earnings method - Section 342.301 rate loans, the model language reads:~~
~~Figure: 7 TAC §90.503(b)(6)(C)~~
~~[Figure: 7 TAC §90.503(b)(8)(C)]~~

~~(7) [(9)] Fee for dishonored check clause. The model clause specifies the maximum allowable dishonored check fee. A licensee may always choose a lesser amount. The model fee for dishonored check provision reads: "I agree to pay you a fee of up to \$30 for a returned check. You may add the fee to the amount I owe or collect it separately."~~

~~(8) [(10)] Default clause. The model provision specifying the conditions causing default reads:~~
~~Figure: 7 TAC §90.503(b)(8)~~
~~[Figure: 7 TAC §90.503(b)(10)]~~

~~(9) [(11)] Property insurance. The model provision regarding property insurance reads:~~
~~Figure: 7 TAC §90.503(b)(9)~~
~~[Figure: 7 TAC §90.503(b)(11)]~~

~~(10) [(12)] Credit insurance. If single premium credit insurance is offered, a permissible change to the disclosure can be to offer a single charge for the entire term of the loan. The term for the single premium charge should be shown for the original term of the loan, unless otherwise specified. The licensee has the option of including language that reads: "The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium." The industry standard regarding the relationship between total past due premiums and the first month's premium in this equation appears to be four times. However, if a different time frame is more appropriate, that time frame may be used. The model credit insurance disclosure box reads:~~
~~Figure: 7 TAC §90.503(b)(10)~~
~~[Figure: 7 TAC §90.503(b)(12)]~~

~~(11) [(13)] Mailing of notices to borrower. The duty to give notice is satisfied when it is mailed by first class mail. The model provision regarding the mailing of notices to the borrower reads: "You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it."~~

~~(12) [(14)] Due on sale clause, notice of intent to accelerate, and notice of acceleration. The model provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration reads: "If all or any interest in the Property is sold or transferred without your prior written consent, you may require immediate payment in~~

full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law. If you exercise this option, you will give me notice that you are demanding immediate payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement."

(13) [(15)] No waiver of lender's rights. The model provision expressing no waiver of the lender's rights reads: "If you don't enforce your rights every time, you can still enforce them later."

(14) [(16)] Collection expenses clause. The model collection expenses clause reads: "If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by Applicable Law. These expenses include, for example, reasonable attorneys' fees."

(15) [(17)] Joint liability. The model provision providing for joint liability reads: "I understand that you may seek payment from only me without first looking to any other Borrower."

(16) [(18)] Usury savings clause. The model usury savings clause reads: "I do not have to pay interest or other amounts that are more than Applicable Law allows."

(17) [(19)] Savings clause. The model savings clause stating that if any part of the contract is invalid, the rest remains valid reads: "If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with any law will be modified to comply with the law. The rest of the Loan Agreement remains valid."

(18) [(20)] Contract supersedes prior agreements. For loan agreements exceeding \$50,000, this notice must be boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material to be conspicuous. The model integration clause providing that the contract supersedes prior agreements reads: "This written Loan Agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this Loan Agreement. Any change to this Loan Agreement must be in writing. Both you and I have to sign written agreements."

(19) [(21)] Security document. The model provision stating that the property described in the loan agreement is subject to the lien of the security document reads: "In addition to the protections given to the Note Holder under this Note, a Security Document, dated _____, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. The Security Document describes how and under what conditions I may be required to make immediate payment in full of any amounts that I owe under this Note."

(20) [(22)] Application of law. The model clause specifying that federal law and Texas law apply to the contract reads: "Federal law and Texas law apply to this Loan Agreement."

(21) [(23)] OCCC [Complaints and inquiries] notice. Under §90.105 of this title (relating to OCCC [Complaints and inquiries] Notice), the following required notice must be given by licensees to let consumers know how to file complaints: "For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot

be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov." ["The (name of Lender or Note Holder) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (name of Lender or Note Holder) should contact the Office of Consumer Credit Commissioner through one of the means indicated below: In Person or U.S. Mail: 2601 North Lamar Boulevard, Austin, Texas 78705-4207; Telephone No.: (800) 538-1579; Fax No.: (512) 936-7610; E-mail: consumer.complaints@occc.state.tx.us; Website: www.occc.state.tx.us."]

(22) [(24)] Clause describing collateral. The model provision describing the collateral reads: "The collateral described above by the property address is subject to the lien of the Security Document."

(23) [(25)] Signature blocks. The licensee may also provide additional signature lines for witness signatures. The model provision regarding signature blocks reads: Figure: 7 TAC §90.503(b)(23) [Figure: 7 TAC §90.503(b)(25)]

(c) Model clauses for a security document for a Chapter 342, Subchapter G second lien purchase money loan contract.

(1) The model definitions section reads:

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

(D) "You" means _____, the Lender and any holder entitled to receive payments under the Note. Your address is _____. Your NMLS ID is _____. You are the beneficiary under this Security Document. The loan originator's name is _____. The loan originator's NMLS ID is _____.

(E) - (N) (No change.)

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §§2601-2617 [§2604 et seq.]) and Regulation X (12 C.F.R. Part 1024) [(24 C.F.R. Part 3500)], as [they might be] amended [from time to time], or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Document, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(P) - (Q) (No change.)

(2) - (35) (No change.)

§90.504. *Permissible Changes.*

(a) A licensee may consider making the following types of changes to the second lien purchase money loans plain language model clauses:

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

(7) A licensee may place its NMLS ID number, the individual residential mortgage loan originator's name, or the originator's NMLS ID on any portion of a document requiring this information, including the signature page. To the extent allowed by Regulation Z, 12 C.F.R. §1026.36(g), and the official commentary to that section, a licensee may omit:

(A) the licensee's NMLS ID number, if the licensee does not have an NMLS ID number and is not legally required to obtain one; and

(B) the individual residential mortgage loan originator's NMLS ID number, if the originator does not have an NMLS ID number and is not legally required to obtain one.

(8) [(7)] A sample model note is presented in the following example.

Figure: 7 TAC §90.504(a)(8)

[Figure: 7 TAC §90.504(a)(7)]

(9) [(8)] A sample model security document is presented in the following example.

Figure: 7 TAC §90.504(a)(9)

[Figure: 7 TAC §90.504(a)(8)]

(b) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2015.

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Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 936-7621



SUBCHAPTER F. SECOND LIEN HOME IMPROVEMENT CONTRACTS (SUBCHAPTER G)

7 TAC §§90.601 - 90.604

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

All of the plain language amendments are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of contracts for a loan under Chapter 342, a retail installment transaction under Chapter 348, or a home equity loan regulated by the Office of Consumer Credit Commissioner.

The amendments regarding the OCCC notice are proposed under Texas Finance Code, §14.104, which requires that a written contract of an authorized lender subject to the OCCC's regulation must contain the name, mailing address, and telephone number of the office. The OCCC believes that a modernized interpretation of §14.104 would include the agency's updated website and email address.

The regulated lender amendments are proposed under Texas Finance Code, §342.551 which grants the commission the authority to adopt rules to enforce the consumer loans chapter.

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

§90.601. *Purpose.*

(a) The purpose of the rules contained in this subchapter is to provide a model plain language contract in English for Texas Finance

Code, Chapter 342, Subchapter G home improvement transactions. The establishment of model provisions for these transactions will encourage use of simplified wording that will ultimately benefit consumers by making these contracts easier to understand. Use of the "plain language" model contract by a licensee is not mandatory. The licensee, however, may not use a contract other than a model contract unless the licensee has submitted the contract to the OCCC [eommissioner] in compliance with §90.104 of this title (relating to Non-Standard Contract Filing Procedures). The OCCC [eommissioner] will issue an order disapproving the contract if the OCCC [eommissioner] determines the contract does not comply with Texas Finance Code, §341.502 or rules adopted under this chapter. A licensee may not claim the OCCC's [eommissioner's] failure to disapprove a contract constitutes approval.

(b) (No change.)

§90.602. *Contract Provisions.*

(a) A Chapter 342, Subchapter G second lien home improvement loan transaction may include, but is not limited to, the following contract provisions to the extent not prohibited by law or regulation. If the licensee desires to exercise its rights under one of the following provisions, it must include that provision in the contract. A licensee who does not desire to apply a provision is not required to include it in the contract. For example, a licensee who does not assess a fee for dishonored checks may omit the fee for dishonored check clause. A licensee may also exclude non-relevant portions of a model clause. For example, a licensee who does not routinely finance certain insurance coverages may omit those non-applicable portions of the model clause. A Chapter 342, Subchapter G home improvement loan transaction may contain the following provisions:

(1) For a contract for use in a transaction that does not allow withdrawals or multiple advances:

- (A) An identification clause;
- (B) A definitions section;
- (C) A provision regarding construction of improvements;
- (D) A clause regarding the contract price;
- (E) A transfer of lien clause;
- (F) A provision specifying that completion is made by the contractor, not the lender;
- (G) A partial lien clause;
- (H) A provision regarding changes and extras;
- (I) A provision regarding receipts and releases;
- (J) A provision specifying that no work has been done prior to execution of the contract;
- (K) A provision regarding the trustee's duties;
- (L) A notice specifying the preservation of claims and defenses;
- (M) A notice specifying that the owner and the contractor are responsible for meeting the terms of the contract;
- (N) An assignment; and
- (O) A provision regarding notice of confidentiality rights.

(2) For a promissory note for use in a transaction that does not allow withdrawals or multiple advances:

- (A) An identification clause;
- ~~(B) A Truth in Lending Act disclosure box;~~
- ~~(C) An itemization of amount financed box;~~
- ~~(B) [(D)] A security for payment provision;~~
- ~~(C) [(E)] A definitions section;~~
- ~~(D) [(F)] A promise to pay;~~
- ~~(E) [(G)] A late charge provision;~~
- ~~(F) [(H)] A provision for after maturity interest;~~
- ~~(G) [(I)] A prepayment clause;~~
- ~~(H) [(J)] A provision specifying the finance charge earnings and refund method;~~
- ~~(I) [(K)] A deferment clause;~~
- ~~(J) [(L)] A provision contracting for a fee for a dishonored check;~~
- ~~(K) [(M)] A provision specifying the conditions causing default;~~
- ~~(L) [(N)] A provision regarding property insurance;~~
- ~~(M) [(O)] A credit insurance disclosure box;~~
- ~~(N) [(P)] A provision regarding the mailing of notices to the borrower;~~
- ~~(O) [(Q)] A provision specifying that the borrower's statements are truthful;~~
- ~~(P) [(R)] A provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration;~~
- ~~(Q) [(S)] A provision expressing no waiver of the lender's rights;~~
- ~~(R) [(T)] A collection expenses clause;~~
- ~~(S) [(U)] A provision providing for joint liability;~~
- ~~(T) [(V)] A usury savings clause;~~
- ~~(U) [(W)] A savings clause stating that if any part of the loan agreement is invalid, the rest remains valid;~~
- ~~(V) [(X)] An integration clause stating that the contract supersedes all prior agreements and that the contract may not be changed by oral agreement;~~
- ~~(W) [(Y)] A provision specifying that federal law and Texas law apply to the contract;~~
- ~~(X) [(Z)] OCCC [Complaints and inquiries] notice;~~
- ~~(Y) [(AA)] A provision describing the collateral;~~
- ~~(Z) [(BB)] A notice regarding the preservation of claims and defenses; and~~
- ~~(AA) [(CC)] Signature blocks.~~

(3) For a contract for use in a transaction that allows for withdrawals or multiple advances:

- (A) An identification clause;
- (B) A definitions section;
- (C) A provision regarding construction of improvements;
- (D) A clause regarding the contract price;

- (E) A clause regarding the note payable to the lender;
- (F) A clause regarding the note being secured by the lien;
- (G) A transfer of lien clause;
- (H) A clause regarding exceptions to conveyance and warranty;
- (I) A provision specifying that completion is made by the contractor, not the lender;
- (J) A partial lien clause;
- (K) A provision regarding changes and extras;
- (L) A provision regarding receipts and releases;
- (M) A provision specifying that no work has been done prior to execution of the contract;
- (N) A provision regarding the owner's promises and rights;
- (O) A provision regarding the owner's duties;
- (P) A provision regarding the contractor's duties;
- (Q) A provision regarding the contractor's rights;
- (R) A provision regarding the trustee's duties;
- (S) General provisions;
- (T) A notice specifying the preservation of claims and defenses;
- (U) A notice specifying that the owner and the contractor are responsible for meeting the terms of the contract;
- (V) An assignment; and
- (W) A provision regarding notice of confidentiality rights.

(4) For a promissory note for use in a transaction that allows for withdrawals or multiple advances:

- (A) An identification clause;
- ~~(B) A Truth in Lending Act disclosure box;~~
- ~~(C) An itemization of amount financed box;~~
- ~~(B) [(D)] A security for payment provision;~~
- ~~(C) [(E)] A definitions section;~~
- ~~(D) [(F)] A promise to pay;~~
- ~~(E) [(G)] A late charge provision;~~
- ~~(F) [(H)] A provision for after maturity interest;~~
- ~~(G) [(I)] A prepayment clause;~~
- ~~(H) [(J)] A provision specifying the finance charge earnings and refund method;~~
- ~~(I) [(K)] A deferment clause;~~
- ~~(J) [(L)] A provision contracting for a fee for a dishonored check;~~
- ~~(K) [(M)] A provision specifying the conditions causing default;~~
- ~~(L) [(N)] A provision regarding property insurance;~~
- ~~(M) [(O)] A credit insurance disclosure box;~~

(N) [(P)] A provision regarding the mailing of notices to the borrower;

(O) [(Q)] A provision specifying that the borrower's statements are truthful;

(P) [(R)] A provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration;

(Q) [(S)] A provision expressing no waiver of the lender's rights;

(R) [(T)] A collection expenses clause;

(S) [(U)] A provision providing for joint liability;

(T) [(V)] A usury savings clause;

(U) [(W)] A savings clause stating that if any part of the loan agreement is invalid, the rest remains valid;

(V) [(X)] An integration clause stating that the contract supersedes all prior agreements and that the contract may not be changed by oral agreement;

(W) [(Y)] A provision specifying that the note is secured by a deed of trust;

(X) [(Z)] A provision specifying that federal law and Texas law apply to the contract;

(Y) [(AA)] OCCE [Complaints and inquiries] notice;

(Z) [(BB)] A provision describing the collateral;

(AA) [(CC)] A notice regarding the preservation of claims and defenses; and

(BB) [(DD)] Signature blocks.

(5) For a deed of trust for use in a transaction that allows for withdrawals or multiple advances:

(A) A definitions section;

(B) A provision regarding the transfer of rights in the property;

(C) A provision regarding late charges and prepayment of principal and interest;

(D) A provision regarding the funds for escrow items;

(E) A provision regarding charges and liens;

(F) A provision regarding property insurance;

(G) A provision regarding preservation, maintenance, protection, and inspection of the property;

(H) A provision regarding protection of the lender's interest in the property and rights under the deed of trust;

(I) A provision regarding the assignment of miscellaneous proceeds and forfeiture;

(J) A provision expressing no waiver of the lender's rights;

(K) A provision regarding joint and several liability and specifying that the person who signs the contract grants ownership in the homestead and binds the person's successors and assigns;

(L) A usury savings clause;

(M) A provision regarding the mailing of notices to the borrower;

(N) A provision specifying that federal law and Texas law apply to the contract;

(O) A provision regarding rules of clause construction;

(P) A provision specifying that the licensee will give the borrower a copy of all signed documents at the time the loan agreement is made;

(Q) A provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration;

(R) Lender, contractor, and borrower's promise and agreement;

(S) A provision regarding acceleration and remedies;

(T) A provision regarding the power of sale;

(U) A provision regarding the borrower's right to reinstate after acceleration;

(V) A provision regarding the assignment of rents, appointment of receiver, and the lender in possession;

(W) A provision regarding release of the lien;

(X) A provision regarding trustees and trustee liability;

(Y) A provision regarding the assignment of the contractor's lien and commencement of the work;

(Z) A provision regarding subrogation;

(AA) A provision regarding what happens if the sum secured and other charges violate applicable law;

(BB) A provision regarding the renewal and extension of the note secured by the deed of trust;

(CC) A provision regarding the sale of the loan, change of loan servicer, notice of grievance, and the lender's right to comply;

(DD) A provision regarding hazardous substances;

(EE) A provision regarding the lender's rights and the borrower's responsibilities;

(FF) A provision regarding default;

(GG) A provision regarding the lender and the borrower's request for notice of default and foreclosure under superior mortgages or deeds of trust;

(HH) Signature blocks; and

(II) A provision regarding notice of confidentiality rights.

(b) The provisions described in this section are separate from the TILA-RESPA integrated disclosures required under Regulation Z, 12 C.F.R. §§1026.19, 1026.37 and 1026.38.

§90.603. *Model Clauses.*

(a) (No change.)

(b) Model clauses for a Chapter 342, Subchapter G second lien home improvement loan contract for use in a transaction that does not allow for withdrawals or multiple advances.

(1) (No change.)

(2) Definitions. The model definitions section reads:

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

(C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom

the Lender has assigned or transferred Lender's rights and remedies. The Lender's NMLS ID is (NMLS ID of Lender). The loan originator's name is (name of loan originator with primary responsibility for the origination). The loan originator's NMLS ID is (NMLS ID of originator).

(D) - (H) (No change.)

(3) - (11) (No change.)

(12) Preservation of claims and defenses. In accordance with the Federal Trade Commission's Holder in Due Course Rule, 16 C.F.R. §433.2 [(16 C.F.R. §433)], it is an unfair or deceptive act or practice to take or receive a consumer credit contract in connection with the sale or lease of goods or services to consumers that does not include the following notice. The notice regarding the preservation of claims and defenses 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 HEREUNDER."

(13) - (15) (No change.)

(c) Model clauses for a Chapter 342, Subchapter G second lien home improvement loan promissory note for use in a transaction that does not allow for withdrawals or multiple advances.

(1) Identification.

(A) The model identification clause lists the account or contract number, the name and address of the lender, the date of the note, the name and address of the borrower, the property address, the principal amount, and the terms of payment. It also lists the following items that must be included on the promissory note under Regulation Z, 12 C.F.R. §1026.36(g):

(i) the lender's Nationwide Mortgage Licensing System and Registry identification number (labeled "Creditor/Lender NMLS ID");

(ii) the name of the individual residential mortgage loan originator with primary responsibility for the origination (labeled "Loan Originator"); and

(iii) the originator's Nationwide Mortgage Licensing System and Registry identification number (labeled "Loan Originator NMLS ID").

(B) The model identification clause [identifying the pronouns used for the borrower and the lender] reads:

Figure: 7 TAC §90.603(c)(1)(B)

[Figure: 7 TAC §90.603(c)(1)]

{(2) Truth in Lending Act disclosure box. The model Truth in Lending Act disclosure box reads:}

[Figure: 7 TAC §90.603(c)(2)]

{(3) Itemization of amount financed box. The itemization of amount financed box is not required if the licensee provides the borrower with a good faith estimate or a settlement statement as permitted by the Truth in Lending Act. An itemization of amount financed box which complies with Regulation Z is considered to be in compliance with this paragraph and will not require a non-standard submission.}

(2) [(4)] Security for payment. The model clause relating to the security for payment reads: "Liens created in the Contract secure

this Note. You will have a security interest in the following described property: (property description)"

(3) [(5)] Definitions. The model definitions section reads:

(A) "Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker.

(B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies.

(C) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement and Power of Sale dated _____ between Contractor and Owner.

(D) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).

(E) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe you is _____ dollars (U.S. \$ _____) plus interest. I have promised to pay this debt in regular periodic payments and to pay the debt in full not later than _____.

(4) [(6)] Promise to pay. One permissible change to the model language for the scheduled installment earnings method would be to allow partial prepayments of the principal during the term of the loan. This variation on the scheduled installment earnings method would allow periodic reductions of the principal balance by partial prepayments. This variation would allow reductions of the principal balance that were not originally scheduled. The model clause options for the borrower's promise to pay read:

(A) For contracts using the scheduled installment earnings method: "I promise to pay the Total of Payments to the order of you. (The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date).) I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(B) For contracts using the true daily earnings method: "I promise to pay the cash advance plus the accrued interest to the order of you. (The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date).) I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(C) The model payment schedule reads:

Figure: 7 TAC §90.603(c)(4)(C)

(5) [(7)] Late charge.

(A) Generally, The general model late charge provision for contracts using the scheduled installment earnings method or the true daily earnings method reads: "If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."

(B) High-cost mortgage loans. The model late charge provision for high-cost mortgage loans subject to the limitation on late charges in Regulation Z, 12 C.F.R. §1026.34(a)(8), reads: "If I don't pay all of a payment within 15 days after it is due, you can charge me a late charge. The late charge will be 4% of the scheduled payment."

(6) [(8)] After maturity interest. The model clause specifies the maximum interest rate allowed by law for after maturity interest. A licensee may always choose a lower rate. The model provision for after maturity interest reads: "If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due."

(7) [(9)] Prepayment clause. The model prepayment clause options read:

(A) For contracts using the scheduled installment earnings method: "I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(B) For contracts using the true daily earnings method: "I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(8) [(40)] Finance charge earnings and refund method. The model provision options specifying the finance charge earnings and refund method read:

(A) For contracts using the scheduled installment earnings method - Section 342.301 rate loans, the model language reads:

Figure: 7 TAC §90.603(c)(8)(A)
[Figure: 7 TAC §90.603(e)(10)(A)]

(B) For contracts using the scheduled installment earnings method with prepayments option - Section 342.301 rate loans, the model language reads:

Figure: 7 TAC §90.603(c)(8)(B)
[Figure: 7 TAC §90.603(e)(10)(B)]

(C) For contracts using the true daily earnings method - Section 342.301 rate loans, the model language reads:

Figure: 7 TAC §90.603(c)(8)(C)
[Figure: 7 TAC §90.603(e)(10)(C)]

(9) [(44)] Deferment. The model provision regarding deferment reads: "If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules."

(10) [(42)] Fee for dishonored check clause. The model clause specifies the maximum allowable dishonored check fee. A licensee may always choose a lesser amount. The model fee for dishonored check provision reads: "I agree to pay you a fee of up to \$30 for a returned check. You may add the fee to the amount I owe or collect it separately."

(11) [(43)] Default. The model provision specifying the conditions causing default reads:

Figure: 7 TAC §90.603(c)(11)
[Figure: 7 TAC §90.603(e)(13)]

(12) [(44)] Property insurance. The model provision regarding property insurance reads:

Figure: 7 TAC §90.603(c)(12)
[Figure: 7 TAC §90.603(e)(14)]

(13) [(45)] Credit insurance. If single premium credit insurance is offered, a permissible change to the disclosure can be to offer a single charge for the entire term of the loan. The term for the single premium charge should be shown for the original term of the loan, unless otherwise specified. The licensee has the option of including language that reads: "The insurance will cancel on the date when

the total past due premiums equal or exceed (insert number) times the first month's premium." The industry standard regarding the relationship between total past due premiums and the first month's premium in this equation appears to be four times. However, if a different time frame is more appropriate, that time frame may be used. The model credit insurance disclosure box reads:

Figure: 7 TAC §90.603(c)(13)
[Figure: 7 TAC §90.603(e)(15)]

(14) [(46)] Mailing of notices to borrower. The duty to give notice is satisfied when it is mailed by first class mail. The model provision regarding the mailing of notices to the borrower reads: "You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it."

(15) [(47)] Statement of truthful information. The model provision specifying that the borrower gave truthful information reads: "I promise that all information I gave you is true."

(16) [(48)] Due on sale clause, notice of intent to accelerate, and notice of acceleration. The model provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration reads: "If all or any interest in the Property is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this loan agreement. You will not exercise this option if prohibited by law. If you exercise this option, you will give me notice that you are demanding payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this loan agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the loan agreement."

(17) [(49)] No waiver of the lender's rights. The model provision expressing no waiver of the lender's rights reads: "If you don't enforce your rights every time, you can still enforce them later."

(18) [(20)] Collection expenses. The model collection expenses clause reads: "If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this loan agreement to the extent not prohibited by applicable law. These expenses include, for example, reasonable attorneys' fees."

(19) [(21)] Joint liability. The model provision providing for joint liability reads: "I understand that you may seek payment from only me without first looking to any other Borrower."

(20) [(22)] Usury savings clause. The model usury savings clause reads: "I do not have to pay interest or other amounts that are more than applicable law allows."

(21) [(23)] Savings clause. The savings model clause stating that if any part of the contract is invalid, the rest remains valid reads: "If any part of this loan agreement is declared invalid, the rest of the loan agreement remains valid. If any part of this loan agreement conflicts with any law, that law will control. The part of the loan agreement that conflicts with any law will be modified to comply with the law. The rest of the loan agreement remains valid."

(22) [(24)] Prior agreements. For loan agreements exceeding \$50,000, this notice must be boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material to be conspicuous. The model clause stating that there are no prior agreements between the parties regarding the loan agreement reads: "This written loan agreement is the final agreement between you and me. It may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating

to this loan agreement. Any change to this loan agreement must be in writing. Both you and I have to sign written agreements."

(23) [(25)] Application of law. The model clause specifying that federal law and Texas law apply to the contract reads: "Federal law and Texas law apply to this loan agreement."

(24) [(26)] OCCC [Complaints and inquiries] notice. Under §90.105 of this title (relating to OCCC [Complaints and inquiries] Notice), the following required notice must be given by licensees to let consumers know how to file complaints: "For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov." [The (name of lender or note holder) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (name of lender or note holder) should contact the Office of Consumer Credit Commissioner through one of the means indicated below: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207; www.occc.state.tx.us; (800) 538-1579."

(25) [(27)] Collateral. The model clause regarding the collateral reads: "The Property is subject to the Contract lien. I am responsible for all obligations in this Note."

(26) [(28)] Preservation of claims and defenses. In accordance with the Federal Trade Commission's Holder in Due Course Rule, 16 C.F.R. §433.2 [(16 C.F.R. §433)], it is an unfair or deceptive act or practice to take or receive a consumer credit contract in connection with the sale or lease of goods or services to consumers that does not include the following notice. The notice regarding the preservation of claims and defenses 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 HEREUNDER."

(27) [(29)] Signature blocks. Documents for a home improvement loan on a homestead must be signed at the office of the lender, an attorney at law, or a title company. If this provision applies, the model clause, "This document must be signed at the office of the Lender, an attorney at law, or a title company" should appear above the signature of the borrower. The licensee may also provide additional signature lines for witness signatures. The model signature block reads:

Figure: 7 TAC §90.603(c)(27)
[Figure: 7 TAC §90.603(e)(29)]

(d) Model clauses for a Chapter 342, Subchapter G second lien home improvement loan contract for use in a transaction that allows for withdrawals or multiple advances.

(1) (No change.)

(2) Definitions. The model definitions section reads:

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

(C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies. The Lender's NMLS ID is (NMLS ID of Lender). The loan originator's name is (name of loan originator with primary responsibility for the origination). The loan originator's NMLS ID is (NMLS ID of originator).

(D) - (P) (No change.)

(3) - (19) (No change.)

(20) Preservation of claims and defenses. In accordance with the Federal Trade Commission's Holder in Due Course Rule, 16 C.F.R. §433.2 [(16 C.F.R. §433)], it is an unfair or deceptive act or practice to take or receive a consumer credit contract in connection with the sale or lease of goods or services to consumers that does not include the following notice. The notice regarding the preservation of claims and defenses 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 HEREUNDER."

(21) - (23) (No change.)

(e) Model clauses for a Chapter 342, Subchapter G second lien home improvement loan promissory note for use in a transaction that allows for withdrawals or multiple advances.

(1) Identification.

(A) The model identification clause lists the account or contract number, the name and address of the lender, the date of the note, the name and address of the borrower, the property address, the principal amount, and the terms of payment. It also lists the following items that must be included on the promissory note under Regulation Z, 12 C.F.R. §1026.36(g):

(i) the lender's Nationwide Mortgage Licensing System and Registry identification number (labeled "Creditor/Lender NMLS ID");

(ii) the name of the individual residential mortgage loan originator with primary responsibility for the origination (labeled "Loan Originator"); and

(iii) the originator's Nationwide Mortgage Licensing System and Registry identification number (labeled "Loan Originator NMLS ID").

(B) The model identification clause [identifying the pronouns used for the borrower and the lender] reads:

Figure: 7 TAC §90.603(e)(1)(B)
[Figure: 7 TAC §90.603(e)(1)]

{(2) Truth in Lending Act disclosure box. The model Truth in Lending Act disclosure box reads:}

[Figure: 7 TAC §90.603(e)(2)]

{(3) Itemization of amount financed box. The itemization of amount financed box is not required if the licensee provides the borrower with a good faith estimate or a settlement statement as permitted by the Truth in Lending Act. An itemization of amount financed box which complies with Regulation Z is considered to be in compliance with this paragraph and will not require a non-standard submission.}

(2) [(4)] Security for payment. The model clause relating to the security for payment reads: "The Deed of Trust and the Lien created in the Contract secure this Note. You will have a security interest in the following described property: (property description)"

(3) [(5)] Definitions. The model definitions section reads:

(A) "Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker.

(B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies.

(C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies.

(D) "Trustee" means (name of Trustee), whose address is (address of Trustee, including county).

(E) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).

(F) "Work" means the construction project as agreed to in writing between the Owner and Contractor.

(G) "Completion Date" means (date on which the Work will be completed).

(H) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement, Power of Sale, and Deed of Trust.

(I) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe you is _____ dollars (U.S. \$ _____) plus interest.

(J) "Loan Agreement" means the Note, Contract, and any other related document under which Lender has made a loan to me.

(K) "Applicable Law" means all controlling applicable federal, state, and local law.

(L) "Tenant at Sufferance" means a person who continues to possess the Property with no current right to possess it.

(M) "Forcible Detainer" means a lawsuit to remove a person from the Property.

(N) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amount under this Contract.

(O) "Successor in Interest" means any party that has taken title to the Property.

(P) "Lien" means the Mechanic's and Materialman's Lien on the Property that results from the Contract and the Work performed. The Lien includes all existing and future improvements, easements, and rights in the Property.

(4) [(6)] Promise to pay. One permissible change to the model language for the scheduled installment earnings method would be to allow partial prepayments of the principal during the term of the loan. This variation on the scheduled installment earnings method would allow periodic reductions of the principal balance by partial pre-

payments. This variation would allow reductions of the principal balance that were not originally scheduled. The model clause options for the borrower's promise to pay read:

(A) For contracts using the scheduled installment earnings method: "I promise to pay the Total of Payments to the order of you. (The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date).) I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(B) For contracts using the true daily earnings method: "I promise to pay the cash advance plus the accrued interest to the order of you. (The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date).) I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(C) The model payment schedule reads:
Figure: 7 TAC §90.603(e)(4)(C)

(5) [(7)] Late charge.

(A) Generally. The general model late charge provision for contracts using the scheduled installment earnings method or the true daily earnings method reads: "If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."

(B) High-cost mortgage loans. The model late charge provision for high-cost mortgage loans subject to the limitation on late charges in Regulation Z, 12 C.F.R. §1026.34(a)(8), reads: "If I don't pay all of a payment within 15 days after it is due, you can charge me a late charge. The late charge will be 4% of the scheduled payment."

(6) [(8)] After maturity interest. The model clause specifies the maximum interest rate allowed by law for after maturity interest. A licensee may always choose a lower rate. The model provision for after maturity interest reads: "If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due."

(7) [(9)] Prepayment clause. The model prepayment clause options read:

(A) For contracts using the scheduled installment earnings method: "I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(B) For contracts using the true daily earnings method: "I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(8) [(10)] Finance charge earnings and refund method. The model provision options specifying the finance charge earnings and refund method read:

(A) For contracts using the scheduled installment earnings method - Section 342.301 rate loans, the model language reads:
Figure: 7 TAC §90.603(e)(8)(A)
[Figure: 7 TAC §90.603(e)(10)(A)]

(B) For contracts using the scheduled installment earnings method with prepayments option - Section 342.301 rate loans, the model language reads:

Figure: 7 TAC §90.603(e)(8)(B)
[Figure: 7 TAC §90.603(e)(10)(B)]

(C) For contracts using the true daily earnings method - Section 342.301 rate loans, the model language reads:

Figure: 7 TAC §90.603(e)(8)(C)
[Figure: 7 TAC §90.603(e)(10)(C)]

(9) [(11)] Deferment. The model provision regarding deferment reads: "If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules."

(10) [(12)] Fee for dishonored check clause. The model clause specifies the maximum allowable dishonored check fee. A licensee may always choose a lesser amount. The model fee for dishonored check provision reads: "I agree to pay you a fee of up to \$30 for a returned check. You may add the fee to the amount I owe or collect it separately."

(11) [(13)] Default. The model provision specifying the conditions causing default reads:

Figure: 7 TAC §90.603(e)(11)
[Figure: 7 TAC §90.603(e)(13)]

(12) [(14)] Property insurance. The model provision regarding property insurance reads:

Figure: 7 TAC §90.603(e)(12)
[Figure: 7 TAC §90.603(e)(14)]

(13) [(15)] Credit insurance. If single premium credit insurance is offered, a permissible change to the disclosure can be to offer a single charge for the entire term of the loan. The term for the single premium charge should be shown for the original term of the loan, unless otherwise specified. The licensee has the option of including language that reads: "The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium." The industry standard regarding the relationship between total past due premiums and the first month's premium in this equation appears to be four times. However, if a different time frame is more appropriate, that time frame may be used. The model credit insurance disclosure box reads:

Figure: 7 TAC §90.603(e)(13)
[Figure: 7 TAC §90.603(e)(15)]

(14) [(16)] Mailing of notices to borrower. The duty to give notice is satisfied when it is mailed by first class mail. The model provision regarding the mailing of notices to the borrower reads: "You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it."

(15) [(17)] Statement of truthful information. The model provision specifying that the borrower gave truthful information reads: "I promise that all information I gave you is true."

(16) [(18)] Due on sale clause, notice of intent to accelerate, and notice of acceleration. The model provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration reads: "If all or any interest in the Property is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law. If you exercise this option, you will give me notice that you are demanding payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement."

(17) [(19)] No waiver of the lender's rights. The model provision expressing no waiver of the lender's rights reads: "If you don't enforce your rights every time, you can still enforce them later."

(18) [(20)] Collection expenses. The model collection expenses clause reads: "If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by Applicable Law. These expenses include, for example, reasonable attorneys' fees."

(19) [(21)] Joint liability. The model provision providing for joint liability reads: "I understand that you may seek payment from only me without first looking to any other Borrower."

(20) [(22)] Usury savings. The model usury savings clause reads: "I do not have to pay interest or other amounts that are more than Applicable Law allows."

(21) [(23)] Savings clause. The model savings clause stating that if any part of the contract is invalid, the rest remains valid reads: "If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with any law will be modified to comply with the law. The rest of the Loan Agreement remains valid."

(22) [(24)] Prior agreements. For loan agreements exceeding \$50,000, this notice must be boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material to be conspicuous. The model clause stating that there are no prior agreements between the parties regarding the loan agreement reads: "This written Loan Agreement is the final agreement between you and me. It may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this Loan Agreement. Any change to this Loan Agreement must be in writing. Both you and I have to sign written agreements."

(23) [(25)] Note secured by deed of trust. The model clause stating that the note is secured by a deed of trust reads: "In addition to this Note, the Deed of Trust protects the Note holder from losses that might result if I do not keep the promises that I make in this Note. The Deed of Trust describes how and under what conditions I may have to make immediate payment of all that I owe under this Note."

(24) [(26)] Application of law. The model clause specifying that federal law and Texas law apply to the contract reads: "Federal law and Texas law apply to this Loan Agreement."

(25) [(27)] OCCC [Complaints and inquiries] notice. Under §90.105 of this title (relating to OCCC [Complaints and inquiries] Notice), the following required notice must be given by licensees to let consumers know how to file complaints: "For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov." ["The (name of lender or note holder) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (name of lender or note holder) should contact the Office of Consumer Credit Commissioner through one of the means in-

dictated below: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207; www.occc.state.tx.us; (800) 538-1579."

(26) [(28)] Collateral. The model clause regarding the collateral reads: "The Property is subject to the Contract lien. I am responsible for all obligations in this Note."

(27) [(29)] Preservation of claims and defenses. The notice regarding the preservation of claims and defenses 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 HEREUNDER."

(28) [(30)] Signature blocks. Documents for a home improvement loan on a homestead must be signed at the office of the lender, an attorney at law, or a title company. If this provision applies, the model clause, "This document must be signed at the office of the Lender, an attorney at law, or a title company" should appear above the signature of the borrower. The licensee may also provide additional signature lines for witness signatures. The model signature block reads:

Figure: 7 TAC §90.603(e)(28)

[Figure: 7 TAC §90.603(e)(30)]

(f) Model clauses for a Chapter 342, Subchapter G second lien home improvement loan deed of trust for use in a transaction that allows for withdrawals or multiple advances.

(1) Definitions. The model definitions section reads:

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

(C) "Lender" is _____.
Lender's address is _____ Lender's
NMLS ID is _____. The loan originator's name is _____
_____. The loan originator's NMLS
ID is _____.

(D) - (O) (No change.)

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §§2601-2617 [~~§2601 et seq.~~]) and Regulation X (12 C.F.R. Part 1024) [~~24 C.F.R. Part 3500~~], as [they might be] amended [from time to time], or any additional or successor legislation or regulation that governs the same subject matter. As used in this Deed of Trust, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(Q) - (T) (No change.)

(2) - (35) (No change.)

§90.604. *Permissible Changes.*

(a) A licensee may consider making the following types of changes to the second lien home improvement contracts plain language model clauses:

(1) For transactions involving a security interest in the consumer's principal dwelling, the Truth in Lending Act, 15 U.S.C. §1635(a), and Regulation Z, 12 C.F.R. §1026.23(b), require the creditor to deliver to the consumer a notice of the right to rescind the transaction. Model forms for the notice of the right to rescind are available at 12 C.F.R. Part 1026, Appendix H, Model Forms H-8 and H-9. [Regulation Z of the Truth in Lending Act provides a right of

rescission form that must be provided to consumers in a transaction involving the consumer's principal dwelling.] The Truth in Lending Act right of rescission form for use in a transaction involving the consumer's principal dwelling reads:

Figure: 7 TAC §90.604(a)(1) (No change.)

(2) - (11) (No change.)

(12) A licensee may place its NMLS ID number, the individual residential mortgage loan originator's name, or the originator's NMLS ID on any portion of a document requiring this information, including the signature page. To the extent allowed by Regulation Z, 12 C.F.R. §1026.36(g), and the official commentary to that section, a licensee may omit:

(A) the licensee's NMLS ID number, if the licensee does not have an NMLS ID number and is not legally required to obtain one; and

(B) the individual residential mortgage loan originator's NMLS ID number, if the originator does not have an NMLS ID number and is not legally required to obtain one.

(13) [(12)] A sample model contract that does not allow for withdrawals or multiple advances is presented in the following example.

Figure: 7 TAC §90.604(a)(13)

[Figure: 7 TAC §90.604(a)(12)]

(14) [(13)] A sample model promissory note that does not allow for withdrawals or multiple advances is presented in the following example.

Figure: 7 TAC §90.604(a)(14)

[Figure: 7 TAC §90.604(a)(13)]

(15) [(14)] A sample model contract that allows for withdrawals or multiple advances is presented in the following example.

Figure: 7 TAC §90.604(a)(15)

[Figure: 7 TAC §90.604(a)(14)]

(16) [(15)] A sample model promissory note that allows for withdrawals or multiple advances is presented in the following example.

Figure: 7 TAC §90.604(a)(16)

[Figure: 7 TAC §90.604(a)(15)]

(17) [(16)] A sample model deed of trust that allows for withdrawals or multiple advances is presented in the following example.

Figure: 7 TAC §90.604(a)(17)

[Figure: 7 TAC §90.604(a)(16)]

(b) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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TRD-201503345

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 936-7621



SUBCHAPTER G. SPANISH DISCLOSURES

7 TAC §90.701, §90.703

The new and 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.

All of the plain language new and amendments are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of contracts for a loan under Chapter 342, a retail installment transaction under Chapter 348, or a home equity loan regulated by the Office of Consumer Credit Commissioner.

The new and amendments regarding the OCCC notice are proposed under Texas Finance Code, §14.104, which requires that a written contract of an authorized lender subject to the OCCC's regulation must contain the name, mailing address, and telephone number of the office. The OCCC believes that a modernized interpretation of §14.104 would include the agency's updated website and email address.

The regulated lender new and amendments are proposed under Texas Finance Code, §342.551 which grants the commission the authority to adopt rules to enforce the consumer loans chapter.

The statutory provisions affected by the proposed new and amendments are contained in Texas Finance Code, Chapters 342 and 348.

§90.701. *Applicability.*

(a) If a contract for a loan under Chapter 342, Subchapters E, F, or G is negotiated in Spanish, then the [a] licensee must deliver a Spanish disclosure specified in §90.703(a) of this title (relating to Form of Disclosure) to the debtor [in Spanish no later than consummation of the contract].

(b) If a retail installment transaction under Chapter 348 is negotiated in Spanish, then the [a] licensee may (but is not required to) [~~may but is not required to,~~] deliver a Spanish disclosure specified in §90.703(b) [§90.703] of this title [(relating to Form of Disclosure)] to the debtor [in Spanish].

(c) (No change.)

§90.703. *Form of Disclosure.*

(a) For a loan under Chapter 342, Subchapters E, F, or G, if the licensee negotiates a term described by §90.702(a) of this title (relating to Negotiation in Spanish), then the licensee must deliver a Spanish disclosure described by this subsection to the debtor. The disclosure must be completed with amounts that are accurate within the tolerances described by Regulation Z, 12 C.F.R. Part 1026.

(1) For loans negotiated in Spanish that are subject to Chapter 342, Subchapter E, the licensee must provide, no later than the consummation of the loan:

(A) a Spanish translation of the loan contract that includes the disclosure form under Regulation Z, 12 C.F.R. §1026.18; or

(B) a copy of the "Notificación de Crédito Al Consumidor (Préstamo a Plazos)" as prescribed in the following figure:
Figure: 7 TAC §90.703(a)(1)(B)

(2) For loans negotiated in Spanish that are subject to Chapter 342, Subchapter F, the licensee must provide, no later than consummation of the loan:

(A) a Spanish translation of the loan contract that includes the disclosure form under Regulation Z, 12 C.F.R. §1026.18; or

(B) copies of both the "Notificación de Crédito Al Consumidor (Préstamo)," and the "Conceptos Financieros."

(i) The "Notificación de Crédito Al Consumidor (Préstamo)," for which the lender should select an appropriate late charge option, is presented in the following figure:
Figure: 7 TAC §90.703(a)(2)(B)(i)

(I) Late Charge Option 1: "Late Charge: If I don't pay an entire payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."

(II) Late Charge Option 1 Spanish Translation: "Cargos por Retrasos: Si no doy un pago completo dentro de 10 días después de vencerse, me puedes cobrar un cargo por retraso. El cargo por retraso será el 5% de la cantidad del pago."

(III) Late Charge Option 2: "Late Charge: For a loan that has an amount financed of less than \$100, the late charge for a payment that is unpaid for 10 days after it is due is 5% of the amount of the installment. For a loan that has an amount financed of \$100 or more, the late charge for a payment that is unpaid for 10 days after it is due is the greater of \$10 or 5% of the amount of the installment."

(IV) Late Charge Option 2 Spanish Translation: "Cargos por Retrasos: Para un préstamo en el cual la cantidad financiada es menor de \$100, el cargo por retraso en un pago que no se liquida por 10 días después de vencerse es 5% de la cantidad del pago. Para un préstamo en el cual la cantidad financiada es de \$100 o más, el cargo por retraso en un pago que no se liquida por 10 días después de vencerse es de \$10 o 5% de la cantidad del pago atrasado, lo que sea mayor."

(ii) The "Conceptos Financieros" are presented in the following figure:

Figure: 7 TAC §90.703(a)(2)(B)(ii)

(3) For loans negotiated in Spanish that are subject to Chapter 342, Subchapter G, the licensee must provide copies of both of the following TILA-RESPA integrated disclosures in Spanish:

(A) No later than the date required for the loan estimate under Regulation Z, 12 C.F.R. §1026.19(e), the licensee must provide to the debtor a copy of the "Estimación de Préstamo" provided by 12 C.F.R. Part 1026, Appendix H, Model Forms H-28(A) through H-28(E) and H-28(I). The licensee must select an appropriate model form based on the type of loan.

(B) No later than the date required for the closing disclosure under Regulation Z, 12 C.F.R. §1026.19(f), the licensee must provide to the debtor a copy of the "Declaración de Cierre" provided by 12 C.F.R. Part 1026, Appendix H, Model Forms H-28(F) through H-28(H) and H-28(J). The licensee must select an appropriate model form based on the type of loan.

(b) If a retail installment transaction under Chapter 348 is negotiated in Spanish, then the licensee may at its option deliver one or both of the following to the debtor:

(1) a Spanish translation of the retail installment sales contract that includes the disclosure form under Regulation Z, 12 C.F.R. §226.18 or §1026.18; or

(2) a copy of the "Notificación de Crédito Al Consumidor (Contrato de Menudeo a Plazos para Vehículo Automotor)," for which the licensee should select the appropriate late charge payment option, as presented in the following figure:
Figure: 7 TAC §90.703(b)(2)

(c) Licensees may delete inapplicable provisions contained in a model disclosure described by this section, except for the TILA-RESPA integrated disclosures required under subsection (a)(3).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2015.

TRD-201503346

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7621



7 TAC §90.703

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

The repeal is proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code.

All of the plain language amendments are proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of contracts for a loan under Chapter 342, a retail installment transaction under Chapter 348, or a home equity loan regulated by the Office of Consumer Credit Commissioner.

The amendments regarding the OCCC notice are proposed under Texas Finance Code, §14.104, which requires that a written contract of an authorized lender subject to the OCCC's regulation must contain the name, mailing address, and telephone number of the office. The OCCC believes that a modernized interpretation of §14.104 would include the agency's updated website and email address.

The regulated lender amendments are proposed under Texas Finance Code, §342.551 which grants the commission the authority to adopt rules to enforce the consumer loans chapter.

The statutory provisions affected by the repeal are contained in Texas Finance Code, Chapters 342 and 348.

§90.703. *Form of Disclosure.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2015.

TRD-201503347

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7621



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 6. HEALTH EDUCATION, TRAINING, AND RESEARCH FUNDS SUBCHAPTER C. TOBACCO LAWSUIT SETTLEMENT FUNDS

19 TAC §6.73

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §6.73 concerning the nursing, allied health, and other health-related education grant programs. The intent of the amendments is to update the Board rules to align with the amendments to the Texas Education Code, Chapter 63, Subchapter C, §63.202(f) and (g), enacted by House Bill 495, 84th Texas Legislature, Regular Session, that extend institutions' eligibility to receive grant awards.

Dr. Rex C. Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending this section.

Dr. Peebles has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the section will be the continuation of awarding grants to eligible institutions that submit competitive grant proposals to address the education, recruitment, and retention of nursing students and faculty. There are no significant economic costs anticipated to persons and institutions who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, Chapter 63, Subchapter C, §63.202, which provides the Coordinating Board with the authority to adopt rules to administer the section.

The amendments affect the implementation of Texas Education Code, §63.202(f) and (g).

§6.73. *Nursing, Allied Health and Other Health-Related Education Grant Program.*

(a) - (g) (No change.)

(h) This subsection pertains to the 2016-2017 and 2018-2019 [2012-2013 and 2014-2015] biennia only (rules are effective only through August 31, 2019 [from September 1, 2011 to August 31, 2015]).

(1) Funds available to the program [~~for the 2012-2013 and 2014-2015 biennia~~] will be distributed as grants in proportions determined by the Board through one or more programs that are based on:

(A) a competitive, peer- or staff-reviewed process for eligible institutions proposing to address the shortage of registered nurses and nursing faculty, as described in subsections (a) - (g) of this section unless amended in paragraph (2) of this subsection;

(B) a staff-reviewed process for eligible institutions, as amended in paragraph (2) of this subsection; or

(C) a criteria-based, funding formula for eligible institutions, as amended in paragraph (2) of this subsection.

(2) In subsection (a)(4) of this section, eligible institutions, as they pertain to paragraph (1) of this subsection, are public institutions of higher education, private or independent institutions of higher education and hospitals that offer nursing programs that prepare students for initial licensure as registered nurses or that prepare qualified faculty for such nursing programs.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 19, 2015.

TRD-201503235

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 427-6114



PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 242. SUPERINTENDENT CERTIFICATE

19 TAC §242.20

The State Board for Educator Certification (SBEC) proposes an amendment to 19 TAC §242.20, concerning provisions for the superintendent certificate. The proposed amendment to 19 TAC §242.20 would provide an individual seeking a superintendent certificate the option to substitute managerial experience in a public school district for the requirement of a principal certificate.

The SBEC rules in 19 TAC Chapter 242 establish requirements for the issuance and renewal of the superintendent certificate. Section 242.20 currently provides requirements for a superintendent certificate.

In December 2014, Texas Education Agency (TEA) staff held a stakeholder meeting to discuss the rules in 19 TAC Chapter 242. Upon bringing stakeholder recommendations to the SBEC during the March 2015 meeting, the SBEC requested that TEA staff convene an additional stakeholder meeting with business leaders, which was held in June 2015. Both stakeholder groups determined that the rules in 19 TAC Chapter 242 need to be revised and updated to allow for a broader pathway to superintendent certification so that the pool of candidates for superintendent could include more diverse experiences and skill sets. The proposed amendment to 19 TAC §242.20 captures the recommendations of stakeholders from the December 2014 and June 2015 stakeholder meetings.

In 19 TAC §242.20, language would be added to provide for the substitution of managerial experience in a public school district for the requirement of a principal certificate, provided that the managerial experience was at least three years in duration, including supervisory or appraisal duties that included district-level planning and coordination of programs, activities, or initiatives and involved either the creation or maintenance of a budget. The amendment would also require the candidate seeking the substitution of managerial experience for principal certification to submit an application to TEA staff so that TEA can ensure that the experience meets the requirements specified in the rule.

Additionally, the amendment would allow for a candidate to obtain standard certification as a superintendent provided that the candidate was hired by the school board of a public school district, completed a superintendent preparation program, passed the state certification examination of superintendents, and possessed at least a bachelor's degree.

The proposed amendment to 19 TAC §242.20 would broaden the prerequisite experience required of superintendent candidates to allow for managerial experience in education to substitute for the principal certification requirement and, alternatively, to allow for experience outside of the field of education, provided a school district has determined that a particular candidate fits the current needs of the school district. The current rule narrowly limits the required experience in education to principal certification, which in turn requires two years of teaching experience. The effect of the proposed amendment would be an expansion of the superintendent candidate pool to include those who had not necessarily been teachers or principals.

The proposed amendment would create a new procedural process for individuals seeking to substitute managerial experience for the principal certificate, as those individuals would need to submit an application to TEA and TEA would need to review the application and respond to the applicant. Also, the proposed amendment would have no additional locally maintained paperwork requirements.

FISCAL NOTE. Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed amendment is in effect there will be additional fiscal implications for state government as a result of enforcing or administering the proposed amendment.

The following fiscal implications are based on an economic benefit to state government (education service centers and public universities) for fiscal years (FYs) 2016-2020. TEA staff also determined that there is no additional fiscal impact on local governments required to comply with the proposed amendment.

Since the proposed amendment would allow individuals previously foreclosed to superintendent preparation to enroll in such a program, TEA staff has determined that a small, positive fiscal impact for EPPs that offer superintendent preparation could result from a slightly increased pool of potential candidates seeking superintendent preparation. TEA staff has assumed that in 2016, about ten candidates would enroll in EPPs that otherwise would not have enrolled, loosely based on the number of superintendents currently working under a certification waiver in the state. In addition, TEA staff has assumed that the cost of an average certification program (a non-degree program) is approximately \$15,000 and there would be an annual increase of about 10% in the number of candidates that enroll in programs as more educators seek out the proposed (non-traditional) path to superintendent certification.

The proposed amendment to 19 TAC §242.20 would cause an increase of revenues to state government in the amount of \$150,000 in FY 2016, \$165,000 in FY 2017, \$181,500 in FY 2018, \$199,650 in FY 2019, and \$219,615 in FY 2020.

PUBLIC BENEFIT/COST NOTE. Mr. Franklin has determined that for the first five-year period the proposed amendment is in effect the public and student benefit anticipated as a result of the proposed amendment to 19 TAC §242.20 would be the potential expansion of the pool of candidates from which to hire superintendents. There are no additional costs to persons required to comply with the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICROBUSINESSES. 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.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins September 4, 2015, and ends October 5, 2015. The SBEC will take registered oral and written comments on the proposed amendment to 19 TAC §242.20 at the October 16, 2015 meeting in accordance with the SBEC board operating policies and procedures. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.texas.gov or faxed to (512) 463-5337. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on September 4, 2015.

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the State Board for Educator Certification (SBEC) to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; and §21.046(a), which states that the qualifications for superintendent must permit a candidate for certification to substitute management training or experience for part of the educational experience.

CROSS REFERENCE TO STATUTE. The proposed amendment implements the TEC, §§21.003(a), 21.040(4), 21.041(b)(2)-(4), and 21.046(a).

§242.20. *Requirements for the Issuance of the Standard Superintendent Certificate.*

(a) To be eligible to receive the standard Superintendent Certificate, a candidate must:

(1) satisfactorily complete an examination based on the standards identified in §242.15 of this title (relating to Standards Required for the Superintendent Certificate); and

(2) successfully complete a State Board for Educator Certification (SBEC)-approved superintendent preparation program and be recommended for certification by that program; and

(3) hold, at a minimum, a master's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board (THECB); and

(4) hold, at a minimum, a principal certificate or the equivalent issued under this title or by another state or country; or[-]

(5) have at least three creditable years of managerial experience in a public school district.

(A) The managerial experience must include responsibility for:

(i) supervising or appraising faculty or staff;

(ii) conducting district-level planning and coordination of programs, activities, or initiatives; and

(iii) creating or maintaining a budget.

(B) The candidate must submit an application to Texas Education Agency (TEA) staff for the substitution of managerial experience as defined in this paragraph. The TEA staff will review the application within 60 calendar days from date of receipt and will notify the applicant in writing of approval or denial.

(b) Alternatively, a candidate is eligible to receive the standard superintendent certificate if:

(1) the candidate is hired by a public school district in Texas for the position of superintendent;

(2) the candidate holds, at a minimum, a bachelor's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB;

(3) the candidate satisfactorily completes an examination based on the standards identified in §242.15 of this title; and

(4) the candidate successfully completes an SBEC-approved superintendent preparation program and is recommended for certification by that program.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 24, 2015.

TRD-201503363

Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 475-1497



CHAPTER 244. CERTIFICATE OF COMPLETION OF TRAINING FOR APPRAISERS

19 TAC §244.1, §244.2

The State Board for Educator Certification (SBEC) proposes amendments to 19 TAC §244.1 and §244.2, concerning certificate of completion of training for appraisers. The proposed amendments to §244.1 and §244.2 would replace references to the old state-recommended teacher appraisal system, the Professional Development and Appraisal System (PDAS), with references to the new state-recommended teacher appraisal system, the Texas Teacher Evaluation and Support System (T-TESS), and would add language to include training for appraisers of principals using the new state-recommended

principal appraisal system, the Texas Principal Evaluation and Support System (T-PESS). The proposed effective date of the amendments would be July 1, 2016, the scheduled date for the implementation of the new state-recommended teacher and principal appraisal systems.

The SBEC rules in 19 TAC Chapter 244 establish general provisions relating to the commissioner of education's recommended system for appraisal of teachers and administrators and adopt the commissioner of education's conditions for the issuance of a certificate of completion of training for appraisers of teachers, for the training of appraisers in districts using locally developed teacher appraisal systems, and for the certification of appraisers of administrators. Section 244.1 currently provides general provisions relating to the appraisal of teachers. Currently, 19 TAC §244.2 provides for the requirements for training of appraisers of educators and administrators in school districts using the commissioner of education's recommended appraisal process.

The proposed amendments to 19 TAC §244.1 and §244.2 would replace references to the old state-recommended teacher appraisal system, PDAS, with references to the new state-recommended teacher appraisal system, T-TESS, and would add language to include training and certification for appraisers of principals using the new state-recommended principal appraisal system, T-PESS, effective July 1, 2016, to coincide with the statewide implementation timeline for T-TESS and T-PESS.

The proposed amendments would have no additional procedural and reporting implications. Also, the proposed amendments would have no additional locally maintained paperwork requirements.

FISCAL NOTE. Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed amendments are in effect there will be no additional fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT/COST NOTE. Mr. Franklin has determined that for the first five-year period the proposed amendments are in effect the public and student benefit anticipated as a result of the proposed amendments would be the continued prevention of duplicative and potentially conflicting sets of rules by the commissioner of education and by the SBEC that relate to the certification and training of appraisers. There are no additional costs to persons required to comply with the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICROBUSINESSES. 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.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins September 4, 2015, and ends October 5, 2015. The SBEC will take registered oral and written comments on the proposed amendments to 19 TAC §244.1 and §244.2 at the October 16, 2015 meeting in accordance with the SBEC board operating policies and procedures. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.texas.gov or faxed to (512) 463-5337. All

requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on September 4, 2015.

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.041(b)(10), which requires the State Board for Educator Certification to propose rules that provide for certification of persons performing appraisals under the TEC, Chapter 21, Subchapter H.

CROSS REFERENCE TO STATUTE. The proposed amendments implement the TEC, §21.041(b)(10).

§244.1. General Provisions.

As authorized by the Texas Education Code (TEC), Chapter 21, Subchapter H, the commissioner of education rules for a recommended teacher appraisal system, known as the Texas Teacher Evaluation and Support System (T-TESS); for a recommended principal appraisal system, known as the Texas Principal Evaluation and Support System (T-PESS); [Professional Development and Appraisal System (PDAS)], and for a recommended administrator appraisal process for administrators other than principals[;] are codified in Chapter 150 of this title (relating to Commissioner's Rules Concerning Educator Appraisal). Other appraisal systems may be locally developed and adopted by a school district according to the TEC, Chapter 21, Subchapter H, and Chapter 150 of this title.

§244.2. Training for Appraisers of Educators in School Districts Using a Recommended Appraisal Process.

(a) The State Board for Educator Certification hereby adopts the appraiser qualifications, required appraiser training, and criteria for acceptable appraiser performance under the recommended Texas Teacher Evaluation and Support System (T-TESS) and the recommended Texas Principal Evaluation and Support System (T-PESS) [Professional Development and Appraisal System (PDAS)], as established by the commissioner of education in Chapter 150 [§150.1006] of this title (relating to Commissioner's Rules Concerning Educator Appraisal [Appraiser Qualifications]).

(b) Training of T-TESS and T-PESS [PDAS] appraisers shall be provided in accordance with the rules established by the commissioner of education in Chapter 150 [Subchapter AA] of this title [(relating to Teacher Appraisal)]. The providers of such training are responsible for verifying completion of the training. The [; and the] regional education service center designated by the commissioner to serve as the T-TESS and T-PESS [PDAS] certification provider for the state is responsible for maintaining documentation and for issuing certification to individuals who have completed [PDAS] training to appraise teachers or principals.

(c) A school district using the commissioner-recommended [administrator] appraisal process for administrators other than principals shall comply with §150.1022(c) of this title (relating to Commissioner-Recommended Administrator Appraisal Process: Procedures) and §244.3 of this title (relating to Training for Appraisers of Educators in School Districts Using Locally-Developed Educator Appraisal Systems).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 24, 2015.



TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 72. APPLICATIONS AND APPLICANTS

22 TAC §72.2

The Texas Board of Chiropractic Examiners (Board) proposes amending Chapter 72, §72.2, concerning Application for Licensure. The proposed amended rule will assist the Board in serving the public, stakeholders and licensees. The amendment will clarify requirements for licensure under the Chiropractic Act, modify fees in accordance with Legislative changes and effect changes for persons with military backgrounds.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed amended rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the amendment of the rule.

Ms. Yarbrough has determined that for the first five-year period the proposed amended rule is in effect, the public benefit expected as a result of the proposed amended rule will be clarifying the present rule resulting in clearer guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed amended rule will not have an adverse economic effect on small businesses or individuals because the proposed amended rule does not impose any duties or obligations upon small businesses or individuals.

This rule was proposed for publication at the Board's meeting on May 20, 2015. The proposed language was published on the Rules Committee and the Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meetings prior to this publication in the *Texas Register*. No comments were received regarding this amendment.

Additional comments on the proposed amended rule and/or a request for a public hearing on the proposed amended rule may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705; or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

This amended rule is proposed under Texas Occupations Code §201.152, relating to rules and §201.502, relating to grounds for refusal, revocation, or suspension of license. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. Section 201.502 provides the Board with discretion to refuse

admission to practice for twenty-two (22) discrete actions. The Board is also authorized to promulgate this rule in carrying out the effect of Texas Occupations Code Chapter 55 and Texas House Bill 7.

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

§72.2. Application for License.

(a) All individuals who wish to practice chiropractic in this state, and who are not otherwise licensed under law, must successfully pass an examination given by or at the direction of the board.

(b) An applicant for licensure through examination shall submit to the Board a written application, on a form provided by the Board. The information contained in the application shall be verified by affidavit of the applicant. Along with the application, an applicant shall also submit a [nonrefundable fee for verification of educational courses/grades for college and a nonrefundable examination] fee, as provided by §78.6(a) of this title (relating to Fees and Charges for Public Information). Upon successfully passing the examination, an applicant shall submit a fee for a new license as provided in §78.6(a) of this title. The amount of the fee shall be prorated from the month of examination to the birth month of the applicant.

(c) Applications for examination must be legibly printed in ink or typewritten on the board form, which will be furnished by the board upon request.

(d) Within 30 days of receiving the completed application, required supporting materials, and required fee [fees], the board shall provide to the applicant a notification of the applicant's status regarding their qualification to take the jurisprudence examination.

(e) The filing of an application and tendering of the fee [fees] to the board shall not in any way obligate the board to admit the applicant to examination until such applicant has been approved by the board as meeting the statutory requirements for admission to the examination for licensure.

(f) Any person furnishing false information on such application shall be denied the right to take the examination, or if the applicant has been licensed before it is made known to the Board of the falseness of such information, such license shall be subject to suspension, revocation or cancellation in accordance with the Chiropractic Act, Occupations Code §201.501.

(g) Notwithstanding any other law, the Board waives the license application and examination fees paid to the state for an applicant who is a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for a chiropractic license. For purposes of this section, "military service member" means a person who is on active duty and "military veteran" means a person who has served on active duty and was discharged or released from active duty.

(h) Applicants seeking licensure may be refused admission to the practice of chiropractic for certain prohibited acts in accordance with Chiropractic Act, Occupations Code §201.502.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 73. CHIROPRACTIC FACILITIES

22 TAC §73.3

The Texas Board of Chiropractic Examiners (Board) proposes amending Chapter 73, §73.3, concerning Annual Renewal of Facility Registrations. The proposed amended rule will assist the Board in serving the public, stakeholders and licensees. The amendment will modify fees in accordance with Legislative changes.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed amended rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the amendment of the rule.

Ms. Yarbrough has determined that for the first five-year period the proposed amended rule is in effect, the public benefit expected as a result of the proposed amended rule will be clarifying the present rule resulting in clearer guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed amended rule will not have an adverse economic effect on small businesses or individuals because the proposed amended rule does not impose any duties or obligations upon small businesses or individuals.

This rule was proposed for publication at the Board's meeting on May 20, 2015. The proposed language was published on the Rules Committee and the Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meetings prior to this publication in the *Texas Register*. No comments were received regarding this amendment.

Additional comments on the proposed amended rule and/or a request for a public hearing on the proposed amended rule may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705; or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

This amended rule is proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The Board is also authorized to promulgate this rule in carrying out the effect of Texas House Bill 7 enacted by the 84th Legislature.

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

§73.3. Annual Renewal of Facility Registrations.

(a) On or before the designated renewal date each year, a registered facility shall renew its certificate of registration, by submitting:

- (1) a facility renewal form as prescribed by the board;

(2) complete information as required on the form, including changes in information since the original application or last renewal;

(3) for a facility that is not owned by a licensee, the following additional information shall be submitted:

(A) the hours of operation for each clinic;

(B) the names and working hours at each clinic for each licensed chiropractor; and

(C) the names and working hours at each clinic for all other personnel; and

(4) the facility registration fee as provided in §78.6(a) of this title (relating to Required Fees and Charges).

(b) A facility registration expires on:

(1) the first day of the owner's birth month if solely owned by a licensed chiropractor;

(2) the first day of the majority owner's birth month, if owned by more than one licensed chiropractor. If a facility is owned equally by more than one licensed chiropractor, the facility registration expires on the first day of the birth month of the owner listed first on the facility application; or

(3) September 1 if owned by a corporation or someone other than a licensed chiropractor.

(c) If a facility's certificate of registration has expired, the facility may renew its registration by submitting to the board all of the items required by subsection (a) of this section and a fee as provided by §78.6(a) of this title (relating to Fees and Charges for Public Information) [~~late fee of \$50.00; if the facility's certificate of registration has expired for more than 90 days, a late fee of \$100.00 must be submitted~~].

(d) A facility owner that fails to renew the facility's registration on or before the expiration date may also be subject to an administrative penalty and other disciplinary sanctions as provided in §73.5 of this title (relating to Disciplinary Action for Facility Owners).

(e) If a facility's certificate of registration has been expired for more than one year, the Board may close the facility's file.

(f) A facility shall not provide chiropractic services without a current certificate of registration. Operating a facility with an expired certificate of registration constitutes operating a facility without a certificate of registration.

(g) The board shall not renew a facility registration of sole proprietor or partnership if the sole proprietor or a partner is in default of a loan guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC) or a repayment agreement with the corporation except as provided by §75.2(c) of this title (relating to Renewal of Chiropractic License). The board may refuse to renew a facility registration of a sole proprietor or partnership if it receives information from an administering entity that the registrant, including a partner, has defaulted on a student loan other than a TGSLC loan, or breached a repayment contract relating to a student loan other than a TGSLC loan or a scholarship contract by failing to perform his or her service obligation under the contract. The board may rescind a denial of renewal under this subsection upon receipt of information from an administering entity that the registrant whose renewal was denied is now in good standing, as provided in §72.3(b) of this title (relating to Qualifications of Applicants). Upon notice that a registrant is again in default or breach of any loan or agreement relating to a student loan or scholarship agreement, the board may suspend the registration or take other disciplinary action

as provided in §77.6 of this title (relating to Default on Student Loans and Scholarship Agreements).

(h) Opportunity for hearing:

(1) the board shall notify a registrant, in writing, of the non-renewal of a registration under subsection (g) of this section and of the opportunity for a hearing under paragraph (2) of this subsection prior to or at the time the annual renewal application is sent.

(2) upon written request for a hearing by a registrant, the board shall set the matter for hearing before the State Office of Administrative Hearings in accordance with §78.8(d) of this title (relating to Complaint Procedures). A registrant shall file a request for a hearing with the board within 30 days from the date of receipt of the notice provided in paragraph (1) of this subsection.

(i) A registration which is not renewed under subsection (g) of this section is considered expired.

(j) When a chiropractic facility ceases providing chiropractic services, the owner shall notify the Board in writing not later than 30 days following the date the facility ceased providing chiropractic services advising of the facility's closure and provide the custodian of records' contact information.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6715



CHAPTER 74. CHIROPRACTIC RADIOLOGIC TECHNOLOGISTS

22 TAC §74.2

The Texas Board of Chiropractic Examiners (Board) proposes amending Chapter 74, §74.2, concerning Chiropractic Radiologic Technologists. The proposed amended rule will assist the Board in serving the public, stakeholders and licensees. The amendment will modify fees in accordance with Legislative changes.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed amended rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the amendment of the rule.

Ms. Yarbrough has determined that for the first five-year period the proposed amended rule is in effect, the public benefit expected as a result of the proposed amended rule will be clarifying the present rule resulting in clearer guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed amended rule will not have an adverse economic effect on small businesses or individuals because the proposed amended rule does not impose any duties or obligations upon small businesses or individuals.

This rule was proposed for publication at the Board's meeting on May 20, 2015. The proposed language was published on the Rules Committee and the Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meetings prior to this publication in the *Texas Register*. No comments were received regarding this amendment.

Additional comments on the proposed amended rule and/or a request for a public hearing on the proposed amended rule may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705; or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

This amended rule is proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The Board is also authorized to promulgate this rule in carrying out the effect of Texas House Bill 7 enacted by the 84th Legislature.

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

§74.2. Registration of Chiropractic Radiologic Technologists.

(a) Registration required. Any person performing radiologic procedures in a chiropractic facility must register with the board, on a form prescribed by the board. This section does not apply to registered nurses or to persons certified under the Medical Radiologic Technologist Certification Act.

(b) Eligibility. An applicant for registration must either:

(1) submit proof of the applicant's registry with the Texas Department of State Health Services (DSHS) and completion of training and instruction as required by 25 TAC §140.518 (relating to Mandatory Training Programs for Non-Certified Technicians); or

(2) perform radiologic procedures for a licensee to whom a hardship exemption was granted by DSHS within the previous 12 months under 25 TAC §140.520 (relating to Hardship Exemptions).

(c) Application submission. An applicant shall submit an application for registration, proof of status as provided in subsection (b) of this section, along with the radiologic technologist application fee as provided in §78.6 of this title (relating to Required Fees and Charges).

(d) Renewal. On or before January 1 of each year, a CRT shall renew his or her registration, by submitting:

(1) a registration application;

(2) the radiologic technologist application fee as provided in §78.6 of this title (relating to Required Fees and Charges); and

(3) proof of renewal status as provided in subsection (b) of this section.

(e) Expired registration.

(1) A CRT registration expires on January 1 of each year if it is not timely renewed.

(2) If a CRT's registration has expired, a person may renew his or her registration by submitting to the board all of the items required by subsection (d) of this section and a fee as provided in §78.6 of this title (relating to Required Fees and Charges) [late fee of \$25].

(3) A person who fails to renew his or her registration on or before the expiration date may also be subject to an administrative

penalty and other disciplinary sanctions as provided in subsection (h) of this section.

(f) Incomplete applications. No registration will be issued on an incomplete submission. Application or renewal packages that are submitted without all of the required documents or fees will be deemed incomplete and returned to the applicant.

(g) DSHS authorization. A person may not perform radiologic procedures if that person is removed from the DSHS registry or the hardship exemption under which the person is working is expired or revoked even if the person holds a valid CRT registration with the board. A CRT must provide to the board a copy of a hardship exemption granted by DSHS within five days of its issuance if the exemption is granted prior to the registration renewal deadline.

(h) Disciplinary sanctions. The board may refuse to issue or renew, suspend, or revoke a CRT registration and/or impose an administrative penalty for the following:

- (1) violation of the rules or an order of the board;
- (2) violation of the Medical Radiologic Technologist Certification Act;
- (3) violation of the rules or an order of DSHS;
- (4) violation of the Texas Chiropractic Act; or
- (5) nonpayment of registration fees.

(i) DSHS compliance. All registrants shall comply with the rules of DSHS for the control of radiation.

(j) Supervision required. A CRT shall perform radiological procedures only under the supervision of a licensee physically present on the premises.

(k) Cineradiography. Procedures that include cineradiography are limited to use by a licensee who has passed a course in its use, approved by the board.

(l) Non-static procedures. Any non-static procedure has the potential to be more dangerous and hazardous and by definition may only be performed by a licensee or a certified medical radiologic technologist.

(m) Licensee responsibility. A licensee shall not authorize or permit a person:

- (1) who is not registered under this section to perform radiologic procedures on a patient unless otherwise authorized under the Medical Radiologic Technologist Act or 25 TAC Chapter 140, Subchapter J (relating to Medical Radiologic Technologists); or
- (2) to perform radiologic procedures on a patient if that person has been removed from the registry of DSHS or the licensee's hardship exemption has been revoked or has expired.

(n) Licensee compliance. A licensee shall comply with the Medical Radiological Technologist Certification Act and all applicable rules of DSHS.

(o) Laws governing disciplinary action. Disciplinary action against a CRT, including the imposition of administrative penalties, is governed by the Administrative Procedures Act, Government Code, Chapter 2001, and applicable enforcement provisions of the Texas Chiropractic Act, Occupations Code, Chapter 201, including Subchapters K through M.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Bryan Snoddy

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Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6715



CHAPTER 75. LICENSES AND RENEWALS

22 TAC §75.2, §75.5

The Texas Board of Chiropractic Examiners (Board) proposes amending Chapter 75, §75.2 and §75.5, concerning Application for Licensure. The proposed amended rules will assist the Board in better serving the public, stakeholders and licensees. The amendments will clarify requirements for licensure under the Chiropractic Act and effect changes for persons with military backgrounds.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed amended rules are in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the amendment of the rules.

Ms. Yarbrough has determined that for the first five-year period the proposed amended rules are in effect, the public benefit expected as a result of the proposed amended rules will be clarifying the present rule resulting in clearer guidance for the public and stakeholders and providing those with various military associations increased flexibility to practice chiropractic under the Board rules.

Ms. Yarbrough has also determined that the proposed amended rules will not have an adverse economic effect on small businesses or individuals because the proposed amended rules do not impose any duties or obligations upon small businesses or individuals.

The rules were proposed for publication at the Board's meeting on May 20, 2015. The proposed language was published on the Rules Committee and the Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meetings prior to this publication in the *Texas Register*. No comments were received regarding these amendments.

Additional comments on the proposed amended rules and/or a request for a public hearing on the proposed amended rules may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705; or rules@tbce.state.tx.us, no later than 30 days from the date that the proposed amendments are published in the *Texas Register*.

The amended rules are proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The Board is also authorized to promulgate this rule in carrying out the effect of Texas Occupations Code Chapter 55.

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

§75.2. *Renewal of Chiropractic License.*

- (a) Annual renewal.

(1) Annual renewal of a licensee's license shall be accomplished on or before the first day of the licensee's birth month (first day of the birth month) by submitting:

(A) the license renewal form provided by the board;

(B) the renewal fee for an active license as provided in §78.6 of this title (relating to Required Fees and Charges);

(C) any late fees, if applicable, as provided in subsection (h) of this section; and

(D) verification of continuing education attendance as required by §75.5 of this title (relating to Continuing Education).

(2) Except as provided in §75.6 of this title (relating to Failure to Meet Continuing Education Requirements), incomplete submission of any of the information required for renewal shall not constitute a completed annual renewal and an annual renewal certificate shall not be issued.

(3) Prior to the due date for an annual renewal, a licensee may instead apply for inactive status in accordance with §75.4 of this title (relating to Inactive Chiropractic License Status).

(4) A military service member who holds a license is entitled to two (2) years of additional time to complete:

(A) any continuing education requirements; and

(B) any other requirement related to the renewal of the military service member's license.

(b) Locum tenens information.

(1) A licensee who substitutes as the treating doctor for another licensee in the facility of the absent licensee shall, along with the information required for annual renewal, provide a list of facilities in which they served as a locum tenens doctor during the past twelve month period.

(2) A licensee serving as a locum tenens doctor shall have proof of licensure readily available when requested. Proof of licensure may include:

(A) a copy of the current license renewal certificate; or

(B) a copy of the wallet size license.

(3) The locum tenens list shall include the following for each facility:

(A) licensee's name;

(B) facility physical address; and

(C) facility registration number displayed on the current facility registration card.

(4) If a facility registration number is not provided, a locum tenens doctor shall report the facility registration number as "not available." Licensees for whom facility numbers are reported as "not available" may be subject to investigation for the operation of an unregistered facility.

(c) Licensees in default of TGSLC student loan or repayment agreement.

(1) The board shall not renew a license of a licensee who is in default of a loan guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC) or a repayment agreement with the corporation except as provided in paragraphs (2) and (3) of this subsection.

(2) For a licensee in default of a loan, the board shall renew the license if:

(A) the renewal is the first renewal following notice to the board that the licensee is in default; or

(B) the licensee presents to the board a certificate issued by the corporation certifying that:

(i) the licensee has entered into a repayment agreement on the defaulted loan; or

(ii) the licensee is not in default on a loan guaranteed by the corporation.

(3) For a licensee who is in default of a repayment agreement, the board shall renew the license if the licensee presents to the board a certificate issued by the corporation certifying that:

(A) The licensee has entered into another repayment agreement on the defaulted loan; or

(B) the licensee is not in default on a loan guaranteed by the corporation or on a repayment agreement.

(4) This subsection does not prohibit the board from issuing an initial license to a person who is in default of a loan or repayment agreement but is otherwise qualified for licensure. However, the board shall not renew the license of such a licensee, if at the time of renewal, the licensee is in default of a loan or repayment agreement except as provided in paragraph (2)(B) or (3) of this subsection.

(d) Licensees in default of other student loans or scholarship obligations.

(1) This subsection applies to a licensee in default of a student loan other than a loan guaranteed by the TGSLC, in breach of a loan repayment agreement other than one related to a TGSLC loan, or in breach of any scholarship contract.

(2) The board may refuse to renew a chiropractic license if it receives information from an administering entity that the licensee has defaulted on a student loan or has breached a student loan repayment contract, or a scholarship contract by failing to perform his or her service obligation under the contract. The board may rescind a denial of renewal under this subsection upon receipt of information from an administering entity that the licensee whose renewal was denied is now in good standing, as provided in §72.3(b) of this title (relating to Qualifications of Applicants).

(e) Upon notice that a licensee is again in default or breach of any loan or agreement relating to a student loan or scholarship agreement under subsections (c) or (d) of this section, the board may suspend the license or take other disciplinary action as provided in §77.6 of this title (relating to Default on Student Loans and Scholarship Agreements).

(f) Opportunity for hearing.

(1) The board shall notify a licensee, in writing, of the non-renewal of a license under subsection (c) or (d) of this section and of the opportunity for a hearing under paragraph (2) of this subsection prior to or at the time the annual renewal application is sent.

(2) Upon written request for a hearing by a licensee, the board shall set the matter for hearing before the State Office of Administrative Hearings in accordance with §78.8(d) of this title (relating to Complaint Procedures). A licensee shall file a request for a hearing with the board within 30 days from the date of receipt of the notice provided in paragraph (1) of this subsection.

(g) A license which is not renewed under subsection (c) or (d) of this section is considered expired. Subsections (h) and (i) of this section apply to a license not renewed under subsection (c) or (d) of this section.

(h) Expired license.

(1) If an active or inactive license is not renewed on or before the first day of the licensee's birth month of each year, it expires.

(2) If a person's license has expired for 90 days or less, the person may renew the license by paying to the board the required renewal fee and a late fee, as provided in §78.6 of this title (relating to Required Fees and Charges).

(3) If a person's license has expired for longer than 90 days, but less than one year, the person may renew the license by paying to the board the required renewal fee and a late fee, as provided in §78.6 of this title.

(4) Except as provided by paragraphs (5) and (6) of this subsection, if a person's license has expired for one year or longer, the person may not renew the license but may obtain a new license by submitting to reexamination and complying with the current requirements and procedures for obtaining an initial license.

(5) At the board's discretion, a person whose license has expired for one year or longer may renew without complying with paragraph (4) of this subsection if the person moved to another state or foreign country and is currently licensed in good standing and has been in practice in the other state or foreign country for two years preceding application for renewal. The person must also pay the board a fee equal to the examination fee, as provided in §78.6 of this title. A person is considered "currently licensed" if such person is licensed by another licensing board recognized by the Board. The Board shall recognize another licensing board that:

(A) has licensing requirements substantially equivalent to the requirements of the Chiropractic Act; and

(B) maintains professional standards considered by the Board to be equivalent to the standards under the Chiropractic Act.

(6) At the board's discretion, a person whose license has expired for one year but not more than three years may renew without complying with paragraph (4) of this subsection if the board determines that the person has shown good cause for the failure to renew the license and pays to the board:

(A) the required renewal fee for each year in which the licensee was expired; and

(B) an additional fee in an amount equal to the sum of:

(i) the jurisprudence examination fee, multiplied by the number of years the license was expired, prorated for fractional years; and

(ii) two times the jurisprudence examination fee.

(7) Good cause for the purposes of paragraph (6) of this subsection means extenuating circumstances beyond the control of the applicant which prevented the person from complying timely with subsection (a) of this section, such as extended personal illness or injury, extended illness of the immediate family, or military duty outside the United States where communication for an extended period is impossible. Good cause is not shown if the applicant was practicing chiropractic during the period of time that the applicant's license was expired. With the renewal application, an applicant must submit a notarized sworn affidavit and supporting documents that demonstrate good cause, in the opinion of the board.

(8) The Board shall exempt a person who holds a license issued by the Board from any increased fee or penalty imposed by the Board for failing to renew the license in a timely manner if the person establishes to the satisfaction of the Board that the failure to renew

the license in a timely manner is because the person was serving as a military service member. For purposes of this section, "military service member" means a person who is on active duty.

(i) Practicing with an expired license. Practicing chiropractic with an expired license constitutes practicing chiropractic without a license. A licensee whose license expires shall not practice chiropractic until the license is renewed or a new license is obtained as provided by subsection (h) of this section, except for a license which is not renewed under subsection (c) or (d) of this section if the licensee has timely requested a hearing under subsection (f) of this section.

(j) Renewal of licenses. A licensee shall furnish a written explanation of his or her answer to any question asked on the application for license renewal, if requested by the board. This explanation shall include all details as the board may request and shall be furnished within two weeks of the date of the board's request.

§75.5. *Continuing Education.*

(a) Condition of Renewal. A licensee is required to attend continuing education courses as a condition of renewal of a license.

(b) Requirements.

(1) Every licensee shall attend and complete 16 hours of continuing education each year unless a licensee is exempted under subsection (d) of this section. Each licensee's reporting year shall begin on the first day of the month in which his or her birthday occurs.

(2) The 16 hours of continuing education may be completed at any course or seminar elected by the licensee, which has been approved under §75.7 of this title (relating to Approved Continuing Education Courses).

(A) A licensee must attend any course designated as a "TBCE Required Course," and the course may be counted as part of the 16 hour requirement. Effective with all doctor of chiropractic licenses renewed on or after July 1, 2009, a minimum of four of the 16 required hours of continuing education shall include topics designated by the board.

(i) A minimum of three hours of the total required continuing education shall consist of a course specifically related to the Board's rules including the Board's code of ethics, recordkeeping, documentation, and coding. This continuing education may be taken online through a course offered by the board. In addition to the requirements in §75.7 of this title, an instructor for this continuing education must meet one of the following criteria:

(I) possess a doctorate degree and possess either an active license to practice chiropractic or law;

(II) is part of the full-time faculty of a chiropractic college accredited by the Council of Chiropractic Education;

(III) is some other qualified health care provider;

or
(IV) is an individual with substantial knowledge, skills and abilities in chiropractic practice.

(ii) A minimum of one hour of the total required continuing education shall relate to risk management relating to the practice of chiropractic in Texas. For the purpose of this rule, risk management refers to the identification, investigation, analysis, and evaluation of risks and the selection of the most advantageous method of correcting, reducing, or eliminating, identifiable risks. This continuing education may be taken online through a course offered by the board. In addition to the requirements in §75.7 of this title, an instructor for this continuing education must meet one of the following criteria:

(I) possess a doctorate degree and possess either an active license to practice chiropractic or law;

(II) is part of the full-time faculty of a chiropractic college accredited by the Council of Chiropractic Education;

(III) is some other qualified health care provider;

or
(IV) is an individual with substantial knowledge, skills and abilities in chiropractic practice.

(iii) Notwithstanding the requirements in this clause, licensees who were initially licensed on or after September 1, 2012, must complete at least eight hours of continuing education in coding and documentation for Medicare claims no later than their second renewal period unless they are in exempted status as noted in subsection (d) of this section. The eight hours of required continuing education in coding and documentation for Medicare claims may be counted as part of the total of 16 continuing education hours required during the year in which the eight hours were completed.

(iv) In addition, from time to time, the board may issue public memoranda regarding urgent or significant public health issues that licensees need to be aware of. The board will publish such memoranda on the board's web site and distribute the memoranda to the major continuing education providers.

(B) A licensee who serves as an examiner for the National Board of Chiropractic Examiners' Part IV Examination may receive credit for this activity, not to exceed eight (8) hours each year.

(C) No more than ten hours or credit may be obtained through online courses. This provision will become effective on or after January 1, 2016.

(3) A list of approved courses, including TBCE Required Courses, is available on the board's website, www.tbce.state.tx.us, as provided in §75.7(g) of this title. The board will also provide notice of a TBCE Course in its newsletter.

(4) A licensee who is unable to travel for the purpose of attending a continuing education course or seminar due to a mental or physical illness or disability may satisfy the board's continuing education requirements by completing 16 hours of approved continuing education courses online. Video courses will no longer qualify for credit.

(A) If the licensee is unable to take an online course, the licensee must submit a request for special accommodations to complete their continuing education requirements.

(B) In order for an online course to be accepted by the board, a licensee must submit a letter from a licensed doctor of chiropractic, medicine, or osteopathy who is not associated with the licensee in any manner. In the letter, the doctor must state the nature of the illness or disability and certify that the licensee was ill or disabled, and unable to travel for the purpose of obtaining continuing education hours due to the illness or disability.

(C) A licensee is required to submit a new certificate for each year an exemption is sought. An untrue certification submitted to the board shall subject the licensee to disciplinary action as authorized by the Chiropractic Act, Occupations Code §201.501 and §201.502.

(D) The ten hour limit provided in subsection (b)(2) of this section for online courses does not apply to a licensee who submits a certification under this subsection. This provision will become effective on or after January 1, 2016.

(c) Verification.

(1) At the request of the Board, a licensee shall submit, to the board, written verification from each sponsor, of the licensee's attendance at and completion of each continuing education course which is used in the fulfillment of the required hours for all years requested.

(2) A licensee submitting hours as a National Boards examiner must submit written verification of the licensee's participation from the National Boards, on National Boards letterhead. The verification must include the licensee's name, board license number, and the date, time, and place of each examination attended by the licensee as an examiner.

(3) Failure to submit verification as required by paragraph (1) of this subsection shall be considered the same as failing to meet the continuing education requirements of subsection (b) of this section.

(d) Qualifying exemption. The following persons are exempt from the requirements of subsection (b) of this section:

(1) a licensee who holds an inactive Texas license. However, if at any time during the reporting year for which such exemption applies such person desires to practice chiropractic, such person shall not be entitled to practice chiropractic in Texas until all required hours of continuing education credits are obtained and the executive director has been notified of completion of such continuing education requirements;

(2) a licensee who is military service member, military veteran, or military spouse [served in the regular armed forces] of the United States during part of the 12 months immediately preceding the annual license renewal date;

(3) a licensee who submits proof satisfactory to the board that the licensee suffered a mental or physical illness or disability which prevented the licensee from complying with the requirements of this section during the 12 months immediately preceding the annual license renewal date; or

(4) a licensee who is in their first renewal period.

(e) A military service member who holds a license is entitled to two (2) years of additional time to complete:

(1) any continuing education requirements; and

(2) any other requirement related to the renewal of the military service member's license.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6715



22 TAC §75.8

The Texas Board of Chiropractic Examiners (Board) proposes new §75.8, concerning Exemption from Licensure Fee for Retired Chiropractor Providing Voluntary Charity Care. The new rule is necessary in order to comply with Occupations Code §112.051 regarding reduced licensure requirements for persons whose only practice is voluntary charity care.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Yarbrough has determined that for the first five-year period the proposed rule is in effect, the public benefit expected as a result of the proposed rule will be greater public confidence in the administration of government and clear guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed rule will not have an adverse economic effect on small businesses or individuals because the new rule does not impose any duties or obligations upon small businesses or individuals.

This rule was proposed for publication at the Board's meeting on May 20, 2015. The proposed language was published on the Rules Committee and the Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meetings prior to this publication in the *Texas Register*. No comments were received concerning the proposal of this rule and its organization.

Comments on the proposed rule and/or a request for a public hearing on the proposed rule may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705; or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed rules are published in the *Texas Register*.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

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

§75.8. Exemption From Licensure Fee for Retired Chiropractor Providing Voluntary Charity Care.

(a) A retired chiropractor licensed by the board whose only practice is the provision of voluntary charity care shall be exempt from the licensure fee. A qualifying chiropractor is a person who maintained a license in good standing prior to seeking the exemption.

(b) As used in this section:

(1) "voluntary charity care" means chiropractic care provided for no compensation to:

- (A) indigent populations;
- (B) in medically underserved areas; or
- (C) for a disaster relief organization.

(2) "compensation" means direct or indirect payment of anything of monetary value, except payment or reimbursement of reasonable, necessary, and actual travel and related expenses.

(c) To qualify for and obtain such an exemption, a chiropractor must truthfully certify under oath, on a form approved by the Board that the following information is correct:

(1) the chiropractor's practice of chiropractic does not include the provision of chiropractic services for either direct or indirect compensation which has monetary value of any kind;

(2) the chiropractor's practice of chiropractic is limited to voluntary charity care for which the chiropractor receives no direct or indirect compensation of any kind for chiropractic services rendered;

(3) the chiropractor's practice of chiropractic does not include the provision of chiropractic services to members of the chiropractor's family; and

(4) the chiropractor's practice of chiropractic comports to the Board's rules.

(d) A chiropractor who qualifies for and obtains an exemption from the licensure fee authorized under this section shall obtain and report continuing education as required under Chapter 75 of the Board's rules.

(e) A retired chiropractor who has obtained an exemption from the licensure fee as provided for under this section, may be subject to disciplinary action under Chapter 201 of the Texas Chiropractic Act and Title 22, Part 3 of the Texas Administrative Code, containing the Board's rules.

(f) A chiropractor who attempts to obtain an exemption from the licensure fee under this section by submitting false or misleading statements to the board shall be subject to disciplinary action pursuant to Chapter 201 of the Texas Chiropractic Act and Title 22, Part 3 of the Texas Administrative Code, containing the Board's rules, in addition to any civil or criminal actions provided for by state or federal law.

(g) A retired chiropractor providing voluntary charity care must obtain the approval of the Board before returning to active status by complying with all provisions of holding an active license under the Board's rule.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

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CHAPTER 76. LICENSURE OF CERTAIN OUT-OF-STATE APPLICANTS

22 TAC §76.1, §76.2

The Texas Board of Chiropractic Examiners (Board) proposes amending Chapter 76, §76.1 and §76.2, concerning Requirements for Licensure of Out-of-State Applicants and Requirements for Licensure of Military Spouses. The proposed amended rules will assist the Board in better serving the public, stakeholders and licensees. The amendments will clarify requirements for licensure under the Chiropractic Act and effect changes for persons with military backgrounds.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed amended rules are in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the amendment of the rules.

Ms. Yarbrough has determined that for the first five-year period the proposed amended rules are in effect, the public benefit expected as a result of the proposed amended rules will be clarifying the present rule resulting in clearer guidance for the public

and stakeholders and providing those with various military associations increased flexibility to practice chiropractic under the Board rules.

Ms. Yarbrough has also determined that the proposed amended rules will not have an adverse economic effect on small businesses or individuals because the proposed amended rules do not impose any duties or obligations upon small businesses or individuals.

The rules were proposed for publication at the Board's meeting on May 20, 2015. The proposed language was published on the Rules Committee and the Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meetings prior to this publication in the *Texas Register*. No comments were received regarding these amendments.

Additional comments on the proposed amended rules and/or a request for a public hearing on the proposed amended rules may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705; or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the Texas Register.

The amended rules are proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The Board is also authorized to promulgate this rule in carrying out the effect of Texas Occupations Code Chapter 55.

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

§76.1. Requirements for Licensure of Out-Of-State Applicants.

(a) An individual who is licensed in another state or foreign country shall be issued a license under the following circumstances:

(1) The applicant must be licensed in good standing as a doctor of chiropractic in another state, the District of Columbia, a territory of the United States, or a foreign country, that has licensing requirements that are substantially equivalent to the requirements of the Texas Chiropractic Act, and must furnish proof of such licensure on board forms provided. For the purposes of this chapter, the term "substantially equivalent" means that the jurisdiction from which the doctor is requesting licensure has, or had at the time of licensure, equivalent practices and requirements in the following areas:

- (A) scope of practice;
- (B) continuing education;
- (C) license renewal;
- (D) enforcement practices;
- (E) examination requirements;
- (F) undergraduate education requirements;
- (G) chiropractic education requirements.

(2) The applicant must have passed the National Board of Chiropractic Examiners Examination Parts I, II, III, IV and Physiotherapy, or the National Board of Chiropractic Examiners SPEC Examination with a grade of 375 or better and must request a true and correct copy of the applicant's score report be sent directly to the Texas Board of Chiropractic Examiners.

(3) The applicant must not have failed a licensure exam conducted by the Board within the 10 years immediately preceding the date of application for a license.

(4) The applicant must not have been the subject of a disciplinary action in any jurisdiction in which the applicant is, or has been, licensed and the applicant must not be the subject of a pending investigation in any jurisdiction in which the applicant is, or has been, licensed.

(5) The applicant must sit for and pass the Texas jurisprudence examination with a grade of 75% or better.

(6) For the three years immediately preceding the date of the application, the applicant must have:

(A) practiced chiropractic; or

(B) practiced as a chiropractic educator at a chiropractic school accredited by the Council on Chiropractic Education.

(b) Application and fee. The candidate for licensure will be subject to all application requirements required by §72.2 of this title (relating to Application for Licensure) and subject to the applicable fees established under §78.6 of this title (relating to Required Fees).

(c) Notwithstanding any other law, the Board waives the license application and examination fees paid to the state for an applicant who is a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for a license to practice chiropractic in Texas. For purposes of this section, "military spouse" means a person who is married to a military service member.

§76.2. Requirements for Licensure of Military Spouses.

(a) This section applies to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States.

(b) The Board may issue a license to an applicant described under subsection (a) of this section who:

(1) holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for a license; or

(2) within the five years preceding the application date held a license in this state that expired while the applicant lived in another state for at least six months.

(c) For the purposes of this section, the term "substantially equivalent" means that the jurisdiction where the applicant described under subsection (b) of this section is currently licensed has, or had at the time of licensure, equivalent practices and requirements in the following areas:

- (1) scope of practice;
- (2) continuing education;
- (3) license renewal;
- (4) enforcement practices;
- (5) examination requirements;
- (6) undergraduate education requirements; and
- (7) chiropractic education requirements.

(d) The Board may allow an applicant described under subsection (b) of this section to demonstrate competency by alternative methods in order to meet the requirements for obtaining a license. The

standard method of demonstrating competency is described in Chapter 72 of this title (relating to Applications and Applicants). In lieu of the standard method of demonstrating competency for a license, and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the Board:

- (1) education;
 - (2) continuing education;
 - (3) examinations (including the National Board of Chiropractic Examiners Parts I - IV and Physiotherapy, or the National Board of Chiropractic Examiners SPEC Examination);
 - (4) letters of good standing;
 - (5) letters of recommendation;
 - (6) work experience; or
 - (7) other methods required by the executive director.
- (e) The executive director may issue a license by endorsement to an applicant described under subsection (b) of this section in the same manner as the Texas Department of Licensing and Regulation under §51.404 of the Texas Occupations Code.

(f) The applicant described under subsection (b) of this section shall submit an application for licensure and proof of the requirements under this section on a form and in a manner prescribed by the Board.

(g) The applicant described under subsection (b) of this section shall submit the applicable fee(s) required for a license. Applicants described under subsection (b)(1) are exempt from the license application and examinations fees paid to the state. Applicants described under subsection (b)(2) shall submit the applicable fee(s) required for a license.

(h) The applicant described under subsection (b) of this section shall undergo a criminal history background check.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6715



22 TAC §76.3

The Texas Board of Chiropractic Examiners (Board) proposes new §76.3, concerning Requirements for Licensure of Military Service Members and Military Veterans. The new rule is necessary in order to provide reduced licensing fees and compliance requirements for certain military personnel in accordance with Texas Occupations Code Chapter 55.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Yarbrough has determined that for the first five-year period the proposed rule is in effect, the public benefit expected as a

result of the proposed rule will be greater public confidence in the administration of government and clear guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed rule will not have an adverse economic effect on small businesses or individuals because the rule does not impose any duties or obligations upon small businesses or individuals.

The rule was proposed for publication at the Board's meeting on May 20, 2015. The proposed language was published on the Rules Committee and the Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meetings prior to this publication in the *Texas Register*. No comments were received concerning the proposal of the rule and the organization.

Comments on the proposed rule and/or a request for a public hearing on the proposed rule may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705; or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed rule is published in the *Texas Register*.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The Board is also authorized to promulgate this rule in carrying out the effect of Texas Occupations Code Chapter 55.

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

§76.3. Requirements for Licensure of Military Service Members and Military Veterans.

(a) This section applies to an applicant who is a military service member or military veteran. For purposes of this section, "military service member" means a person who is on active duty and "military veteran" means a person who has served on active duty and was discharged or released from active duty.

(b) The Board shall exempt a person who holds a license issued by the Board from any increased fee or penalty imposed by the Board for failing to renew the license in a timely manner if the person establishes to the satisfaction of the Board that the failure to renew the license in a timely manner is because the person was serving as a military service member. For purposes of this section, "military service member" means a person who is on active duty.

(c) The Board may issue a license to an applicant described under subsection (a) of this section who:

(1) holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for a license; or

(2) within the five years preceding the application date held a license in this state that expired while the applicant lived in another state for at least six months.

(d) For the purposes of this section, the term "substantially equivalent" means that the jurisdiction where the applicant described under subsection (c) of this section is currently licensed has, or had at the time of licensure, equivalent practices and requirements in the following areas:

(1) scope of practice;

(2) continuing education;

- (3) license renewal;
- (4) enforcement practices;
- (5) examination requirements;
- (6) undergraduate education requirements; and
- (7) chiropractic education requirements.

(e) The Board may allow an applicant described under subsection (c) of this section to demonstrate competency by alternative methods in order to meet the requirements for obtaining a license. The standard method of demonstrating competency is described in Chapter 72 of this title (relating to Applications and Applicants). In lieu of the standard method of demonstrating competency for a license, and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the Board:

- (1) education;
- (2) continuing education;
- (3) examinations (including the National Board of Chiropractic Examiners Parts I - IV and Physiotherapy, or the National Board of Chiropractic Examiners SPEC Examination);
- (4) letters of good standing;
- (5) letters of recommendation;
- (6) work experience; or
- (7) other methods required by the executive director.

(f) The executive director may issue a license by endorsement to an applicant described under subsection (c) of this section in the same manner as the Texas Department of Licensing and Regulation under §51.404 of the Texas Occupations Code.

(g) The applicant described under subsection (c) of this section shall submit an application for licensure and proof of the requirements under this section on a form and in a manner prescribed by the Board.

(h) Applicants described under subsection (c)(1) are exempt from the license application and examinations fees paid to the state. Applicants described under subsection (c)(2) shall submit the applicable fee(s) required for a license.

(i) The applicant described under subsection (c) of this section shall undergo a criminal history background check.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 77. PROFESSIONAL CONDUCT
22 TAC §77.7

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the

Texas Board of Chiropractic Examiners or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of Chapter 77, §77.7, concerning Request for Information and Records from Licensees. The repeal is necessary in order to clarify, restructure and draft a new rule regarding Board procedures to provide concise and clear guidance to the public and licensees.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed repeal is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the repeal of the rule.

Ms. Yarbrough has determined that for the first five-year period the proposed repeal is in effect, the public benefit expected as a result of the proposed repeal will be clarifying and reorganizing the proposed new rule resulting in clearer guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed repeal will not have an adverse economic effect on small businesses or individuals because the repeal does not impose any duties or obligations upon small businesses or individuals.

This repeal was proposed upon a recommendation by the Rules Committee to the Board and approved by the Board for publication. Comments were received that noted the records and information request needed additional clarification.

Comments on the proposed repeal and/or a request for a public hearing on the proposed repeal may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705; or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed repeal is published in the *Texas Register*.

This repeal is proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

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

§77.7. Request for Information and Records from Licensees.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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22 TAC §77.7

The Texas Board of Chiropractic Examiners (Board) proposes new Chapter 77, §77.7, concerning Request for Information from Covered Entities. The proposed new rule is necessary in order to harmonize the Board's rules with existing state and federal requirements concerning chiropractic records.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed new rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the new rule.

Ms. Yarbrough has determined that for the first five-year period the proposed new rule is in effect, the public benefit expected as a result of the proposed new rule will be clarifying the present rule resulting in clearer guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed new rule will not have an adverse economic effect on small businesses or individuals because the proposed new rule does not impose any duties or obligations upon small businesses or individuals.

This rule was proposed for publication at the Board's meeting on May 20, 2015. The proposed language was published on the Rules Committee and the Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meetings prior to this publication in the *Texas Register*.

Comments on the proposed language reflect a need to clarify that the rule scope is coexistent with Texas House Bill 300 and Federal Health Insurance Portability and Accountability Act of 1996 requirements. Further comments recognized the practical realities of expedited records requests and covered entities that maintain records in offsite storage facilities. The proposed language was modified in subsection (g) to recognize that those covered entities might incur additional costs in expedited and off-site transactions that may be passed on to a requestor.

Comments on the proposed new rule and/or a request for a public hearing on the proposed rule may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705; or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed rule is published in the *Texas Register*.

This new rule is proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

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

§77.7. Request for Information and Records from Covered Entities.

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

(1) Covered entity--Any person as identified within Health and Safety Code, Title 2, Health, Subchapter I, Medical Records, Chapter 181 Medical Records Privacy, §181.001.

(2) Chiropractic record--Any record regularly utilized, created, or stored by a covered entity in the ordinary course and scope of business pertaining to the history, diagnosis, treatment or prognosis of the patient, including records of other health care practitioners contained in the records of the covered entity.

(3) Patient--Any person who consults or is seen by a covered entity for the purposes of receiving chiropractic care.

(b) Request for chiropractic records. Upon request, a covered entity shall furnish copies of chiropractic records, a summary, or narrative of the records pursuant to a written consent for disclosure. A request may be in oral form if it is documented in writing by the covered entity. The requested information or record shall not be released if the covered entity determines that access to the information would

be harmful to the physical, mental, or emotional health of the patient. If the covered entity determines that access to the information would be harmful, the covered entity will document in writing the reasons why the disclosure would be harmful. The covered entity may delete from the requested records confidential information about another person who has not authorized disclosure.

(c) Written consent.

(1) The written consent required by subsection (b) of this section shall be signed by:

(A) the patient;

(B) the patients' personal representative if the patient is deceased;

(C) a parent or legal guardian if the patient is a minor;

(D) a legal guardian if the patient has been adjudicated incompetent to manage his or her personal affairs; or

(E) an attorney ad litem for the patient as authorized by law, including the Health and Safety Code, Title 7, Family Code, Chapter 11 or the Probate Code, Chapter 5.

(2) The written consent shall contain the specific information or chiropractic records to be disclosed under the consent; the reasons or purposes for the disclosure; and the person to whom the information is to be disclosed.

(3) The patient, or other person authorized to consent, has the right to withdraw the consent to the release of any information. Withdrawal of consent does not affect any information disclosed prior to the written notice of the withdrawal. Any person who received information made confidential by the Chiropractic Act may disclose the information to others only to the extent consistent with the authorized purposes for which consent to disclose information was obtained.

(d) Oral consent.

(1) The oral consent permitted by subsection (b) of this section shall be documented by the covered entity by:

(A) identifying the patient by presentation of valid government identification; or

(B) the presentation of legal documents sufficient to identify a person as the patient's legal representative or guardian; and

(C) written documentation of the oral consent kept by the covered entity must include annotations recording the time, date, and identification of the patient, the patient's personal representative if the patient is deceased, a parent or legal guardian if the patient is a minor, a legal guardian if the patient has been adjudicated incompetent to manage his or her personal affairs; or an attorney ad litem for the patient as authorized by law, including the Health and Safety Code, Title 7, Family Code, Chapter 11 or the Probate Code, Chapter 5.

(2) The written documentation of the oral consent shall contain the specific information or chiropractic records to be disclosed under the oral consent; the reasons or purposes for the disclosure; and the person to whom the information is to be disclosed.

(3) The patient, or other person authorized to consent, has the right to withdraw the consent to the release of any information. Withdrawal of consent does not affect any information disclosed prior to the oral notice of the withdrawal. Any person who received information made confidential by the Chiropractic Act may disclose the information to others only to the extent consistent with the authorized purposes for which consent to disclose information was obtained.

(e) Reasonable time. A copy of chiropractic records or a summary or narrative of the records requested under subsection (b) of this section shall be furnished by the covered entity within a reasonable time, not to exceed 15 business days from the date of the request.

(f) Denial of request. If the covered entity denies the request under subsection (b) of this section for a copy of chiropractic records or a summary or narrative of the records, either in whole or in part, the covered entity shall furnish the patient a written statement, signed and dated, stating the reason for the denial. Chiropractic records requested pursuant to subsection (b) of this section may not be withheld based upon:

- (1) a past due account for care or treatment previously rendered to the patient;
- (2) on the lack of a letter of protection; or
- (3) any other document having a similar effect.

(g) Fee for records. The covered entity may charge a reasonable fee for furnishing the information requested under subsection (a) of this section, in accordance with the following provisions:

(1) The fee shall be paid by the patient or someone else on the patient's behalf.

(2) A covered entity may require payment in advance except from another covered entity or other health care provider, including a chiropractor licensed by any other state, territory, or insular possession of the United States or any state or province of Canada, if requested for purposes of emergency or acute medical care.

(3) In the event payment is not received, within ten calendar days from notification of the charge, the covered entity shall notify the requesting party in writing of the need for payment.

(4) A reasonable fee for a paper copy shall be a charge not to exceed:

- (A) \$30 for retrieval of records and processing the request, including copies for the first 10 pages;
- (B) \$1.00 per page for pages 11-60;
- (C) \$.50 per page for pages 61-400; and
- (D) \$.25 per page for pages over 400.

(5) A reasonable fee for copies of films or other static diagnostic imaging studies shall be a charge not to exceed \$45 for retrieval and processing, including copies for the first 10 pages, and \$1.00 for each additional page over 10.

(6) Reasonable fees may also include actual costs for mailing, shipping, delivery, off-site recovery charges incurred by the covered entity and expedited recovery fees incurred by the covered entity.

(7) A reasonable fee for completing and signing an affidavit or questionnaire certifying that the information provided is a true and current copy of the records may not exceed \$15.

(8) In addition to the fee contemplated in paragraph (7) of this subsection, reasonable fees may also include the actual costs paid by the covered entity to a notary for notarizing an affidavit, questionnaire, or other document.

(9) Notwithstanding subsection (g), a covered entity may not charge for records where prohibited as noted in Health and Safety Code, Title 2, Health, Subchapter H, Public Health Provisions, Chapter 161 Medical or Mental Health Records or any other applicable state and federal law.

(h) Subpoena not required. A subpoena shall not be required for the release of chiropractic records requested pursuant to subsection (b) of this section.

(i) Nothing within this section should be construed to supersede Health and Safety Code, Title 2, Health, Subchapter I, Medical Records, Chapter 181 Medical Records Privacy or any other applicable state and federal law.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6715



22 TAC §77.13 - 77.17

The Texas Board of Chiropractic Examiners (Board) proposes new §§77.13-77.17, concerning Bribery, Coercion of Public Servant or Voter, Improper Influence, Tampering with a Witness, and Obstruction or Retaliation. The new rules are necessary in order to ensure fairness and transparency in all Board proceedings.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed rules are in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Yarbrough has determined that for the first five-year period the proposed rules are in effect, the public benefit expected as a result of the proposed rules will be greater public confidence in the administration of government and clear guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed rules will not have an adverse economic effect on small businesses or individuals because the rules do not impose any duties or obligations upon small businesses or individuals.

These rules were proposed after the Board's May 20, 2015 meeting where the matter was published on the agenda and comment on the proposal was sought prior to the publication in the *Texas Register*. No comments were received concerning the proposal of these rules and their organization.

Comments on the proposed rules and/or a request for a public hearing on the proposed rules may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705; or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed rules are published in the *Texas Register*.

The rules are proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

No other statutes, articles, or codes are affected by the new rules.

§77.13. Bribery.

(a) A person commits a violation if they intentionally or knowingly offer, confer, or agree to confer on another, or solicit, accept, or agree to accept from another:

(1) any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(2) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or

(3) any benefit as consideration for a violation of a duty imposed by law on a public servant or party official.

(b) It is no defense to enforcement of this violation under this section that the benefit is not offered or conferred or that the benefit is not solicited or accepted until after:

(1) the decision, opinion, recommendation, vote, or other exercise of discretion has occurred; or

(2) the public servant ceases to be a public servant.

(c) It is an exception to the application of paragraphs (1), (2), and (3) of subsection (a) that the benefit is a political contribution as defined by Title 15, Election Code, or an expenditure made and reported in accordance with Chapter 305, Government Code.

§77.14. Coercion of Public Servant or Voter.

(a) A person commits a violation if by means of coercion they:

(1) influence or attempt to influence a public servant in a specific exercise of his official power or a specific performance of his official duty or influences or attempts to influence a public servant to violate the public servant's known legal duty; or

(2) influence or attempt to influence a voter not to vote or to vote in a particular manner.

(b) It is an exception to the application of subsection (a)(1) of this section that the person who influences or attempts to influence the public servant is a member of the governing body of a governmental entity, and that the action that influences or attempts to influence the public servant is an official action taken by the member of the governing body. For the purposes of this subsection, the term "official action" includes deliberations by the governing body of a governmental entity.

§77.15. Improper Influence.

(a) A person commits a violation if they privately address a representation, entreaty, argument, or other communication to any public servant who exercises or will exercise official discretion in an adjudicatory proceeding with an intent to influence the outcome of the proceeding on the basis of considerations other than those authorized by law.

(b) For purposes of this section, "adjudicatory or official proceeding" means any proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

§77.16. Tampering With a Witness.

(a) A person commits a violation if, with intent to influence the witness, they offer, confer, or agree to confer any benefit on a witness or prospective witness in an official proceeding, or they coerce a witness or a prospective witness in an official proceeding:

(1) to testify falsely;

(2) to withhold any testimony, information, document, or thing;

(3) to elude legal process summoning him to testify or supply evidence;

(4) to absent themselves from an official proceeding to which the witness has been legally summoned; or

(5) to abstain from, discontinue, or delay the official proceeding of another.

(b) It is a defense to a violation under subsection (a)(5) that the benefit received was:

(1) reasonable restitution for damages suffered by the complaining witness as a result of the violation; and

(2) a result of an agreement negotiated with the assistance or acquiescence of an attorney for the state who represented the state in the case.

§77.17. Obstruction or Retaliation.

(a) A person commits a violation if they intentionally or knowingly harm or threaten to harm another by an unlawful act:

(1) in retaliation for or on account of the service or status of another as a:

(A) public servant, witness, prospective witness, or informant; or

(B) person who has reported or who the actor knows intends to report the occurrence of a crime; or

(2) to prevent or delay the service of another as a:

(A) public servant, witness, prospective witness, or informant; or

(B) person who has reported or who the actor knows intends to report the occurrence of a crime.

(b) For purpose of this section, "Informant" means a person who has communicated information to the government in connection with any governmental function.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2015.

TRD-201503322

Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 305-6715



CHAPTER 78. RULES OF PRACTICE

22 TAC §78.6

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

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of Chapter 78, §78.6, concerning Required Fees and Charges. The repeal is necessary in order to clarify, restructure and draft a new rule regarding Board procedures to provide concise and clear guidance to the public and licensees.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed repeal is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the repeal of the rule.

Ms. Yarbrough has determined that for the first five-year period the proposed repeal is in effect, the public benefit expected as a result of the proposed repeal will be clarifying and reorganizing the proposed new rule resulting in clearer guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed repeal will not have an adverse economic effect on small businesses or individuals because the repeal does not impose any duties or obligations upon small businesses or individuals.

This rule was proposed for repeal at the Board's meeting on May 20, 2015. Comment on the proposal was sought during the Rules Committee and the Board meetings prior to this publication in the *Texas Register*. No comments were received regarding this repeal.

Comments on the proposed repeal and/or a request for a public hearing on the proposed repeal may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705; or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed repeal is published in the *Texas Register*.

This repeal is proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. Additionally, the Board is authorized to adopt new rules to come into compliance with Texas House Bill 7 enacted by the 84th Legislature.

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

§78.6. Required Fees and Charges.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2015.

TRD-201503342

Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 305-6715



22 TAC §78.6

The Texas Board of Chiropractic Examiners (Board) proposes new Chapter 78, §78.6, concerning Required Fees and Charges. The new rule is necessary in order to update the fee schedule which lowers fees in accordance with Texas House Bill 7 enacted by the 84th Legislature.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed new rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the new rule.

Ms. Yarbrough has determined that for the first five-year period the proposed new rule is in effect, the public benefit expected

as a result of the proposed new rule will be clarifying the present rule resulting in clearer guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed new rule will not have an adverse economic effect on small businesses or individuals because the proposed rule does not impose any duties or obligations upon small businesses or individuals.

This rule was proposed for publication at the Board's meeting on May 20, 2015. The proposed language was published on the Rules Committee and the Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meetings prior to this publication in the *Texas Register*. No comments were received regarding this new rule.

Comments on the proposed rule and/or a request for a public hearing on the proposed rule may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705; or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed rule is published in the *Texas Register*.

This new rule is proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. Additionally, the Board is authorized to adopt new rules to come into compliance with Texas House Bill 7 enacted by the 84th Legislature.

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

§78.6. Required Fees and Charges.

(a) Current fees required by the board are as follows:

Figure: 22 TAC §78.6(a)

(b) The board is required to increase its fees for annual renewal, an examination, and re-examination by \$200 pursuant to the Occupations Code §201.153(b). That increase is reflected in subsection (a) of this section under the column entitled "Professional Fee (78th Leg)." The total amount of each of these fees must be paid before the board will process an application subject to such fee.

(c) Any remittance submitted to the board in payment of a required fee for application, initial license, registration, or renewal, must be in the form of a cashier's or certified check for guaranteed funds or money order, made out to the "Texas Board of Chiropractic Examiners." Checks from foreign financial institutions are not acceptable.

(d) Fees for license verification or certification, license replacement, and continuing education applications may submit the required fee in the form of a personal or company check, cashier's or certified check for guaranteed funds or money order, made out to the "Texas Board of Chiropractic Examiners." Checks from foreign financial institutions are not acceptable. Persons who have submitted a check which has been returned, and who have not made good on that check and paid the returned check fee provided in subsection (a) of this section, within 10 days from notice from the board of the returned check, for whatever reason, shall submit all future fees in the form of a cashier's or certified check or money order.

(e) Copies of public information, not excepted from disclosure by the Texas Open Records Act, Chapter 552, Government Code, including the information listed in paragraphs (1) - (6) of this subsection may be obtained upon written request to the board, at the rates established by the Office of the Attorney General for copies of public information, 1 TAC Part 3, Chapter 70, §§70.1 - 70.10 (relating to Cost of Copies of Public Information).

(1) List of New Licensees

- (2) Lists of Licensees
- (3) Licensee Labels
- (4) Demographic Profile
- (5) Facilities List
- (6) Facilities Labels

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2015.

TRD-201503349

Bryan Snoddy
General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 305-6715



22 TAC §78.10

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

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of Chapter 78, §78.10, concerning Schedule of Sanctions. The repeal is necessary in order to clarify, restructure and draft a new rule regarding Board procedures to provide concise and clear guidance to the public and licensees.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed repeal is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the repeal of the rule.

Ms. Yarbrough has determined that for the first five-year period the proposed repeal is in effect, the public benefit expected as a result of the proposed repeal will be clarifying and reorganizing the proposed new rule resulting in clearer guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed repeal will not have an adverse economic effect on small businesses or individuals because the repeal does not impose any duties or obligations upon small businesses or individuals.

This repeal was proposed upon a recommendation by the Rules Committee to the Board and approved by the Board for publication. Comments were received that noted an expansive version of the maximum sanctions table would reduce confusion and aid Board and the stakeholders.

Comments on the proposed repeal and/or a request for a public hearing on the proposed repeal may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705; or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed repeal is published in the *Texas Register*.

This repeal is proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

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

§78.10. Schedule of Sanctions.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2015.

TRD-201503280

Bryan Snoddy
General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 305-6715



22 TAC §78.10

The Texas Board of Chiropractic Examiners (Board) proposes new Chapter 78, §78.10, concerning Schedule of Sanctions. The proposed new rule is necessary in order to clarify the Board's rule and provide harmony with existing statutes and rules.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed new rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the new rule.

Ms. Yarbrough has determined that for the first five-year period the proposed new rule is in effect, the public benefit expected as a result of the proposed new rule will be clarifying the present rule resulting in clearer guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed new rule will not have an adverse economic effect on small businesses or individuals because the proposed new rule does not impose any duties or obligations upon small businesses or individuals.

This rule was proposed for publication at the Board's meeting on May 20, 2015. The proposed language was published on the Rules Committee and the Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meetings prior to this publication in the *Texas Register*. No comments were received on the rule.

Comments on the proposed new rule and/or a request for a public hearing on the proposed new rule may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705; or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed new rule is published in the *Texas Register*.

This new rule is proposed under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

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

§78.10. Schedule of Sanctions.

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

(1) APA--Administrative Procedure Act, Government Code, Chapter 2001.

(2) Board--Texas Board of Chiropractic Examiners.

(3) Chiropractic Act or CA--Occupations Code, Chapter 201 (formerly Texas Civil Statutes, Article 4512b).

(4) HPCA--Health Professions Council Act, Occupations Code, Chapter 101.

(5) HRC--Human Resources Code.

(6) Licensee--A person who is licensed by the board to practice chiropractic in the State of Texas.

(7) MRTCA--Medical Radiologic Technologist Certification Act, Occupations Code, Chapter 601.

(8) Occ. Code--Occupations Code.

(9) Respondent--An individual or facility regulated by the board against whom a complaint has been filed.

(10) SOAH--State Office of Administrative Hearings.

(11) DSHS--Department of State Health Services.

(b) The following table contains maximum sanctions that may be assessed for each category of violation listed in the table: Figure: 22 TAC §78.10(b)

(c) In a case where a respondent has committed multiple violations or multiple occurrences of the same violation, Board staff, the enforcement committee or an administrative law judge may recommend and the board may impose sanctions in excess of a maximum sanction specified in the maximum sanction table provided by subsection (b) of this section, if otherwise authorized by law. For the fourth and subsequent offenses of any violation listed in the maximum sanction table with three levels of sanctions, the maximum sanction is revocation and/or \$1,000 administrative penalty.

(d) An administrative penalty may not exceed \$1,000 per day for each violation. Each day a violation continues or occurs is a separate violation for the purposes of imposing an administrative penalty.

(e) For violation of a statute which is not listed in the maximum sanction table and for which the board is authorized to take disciplinary action, the maximum sanction is revocation and/or \$1,000 administrative penalty.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 24, 2015.

TRD-201503368

Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 305-6715



22 TAC §78.16

The Texas Board of Chiropractic Examiners (Board) proposes amending Chapter 78, §78.16, concerning Cease and Desist Orders. The proposed amended rule is necessary in order to remove the requirement for an informal hearing that is not found within the Chiropractic Act.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed amended rule is in effect,

there will not be any fiscal implications for state or local government as a result of enforcing or administering the proposed amendment of the rule.

Ms. Yarbrough has determined that for the first five-year period the proposed amended rule is in effect, the public benefit expected as a result of the proposed amended rule will be clarifying the present rule resulting in clearer guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed amended rule will not have an adverse economic effect on small businesses or individuals because the proposed amended rule does not impose any duties or obligations upon small businesses or individuals.

This amended rule was proposed upon a recommendation by the Rule Committee to the Board and approved by the Board for publication. The purpose of the amendment is to remove a requirement for an informal hearing that is unsupported by statutory provisions mentioned in the current rule. No comments were received regarding proposal of the amendment.

Comments on the proposed amended rule and/or a request for a public hearing on the proposed amended rule may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705; or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed new rule is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

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

§78.16. *Cease and Desist Orders.*

The Board of Chiropractic Examiners delegates to its Enforcement Committee the authority to determine whether it appears that a person is engaging in an act or practice that constitutes the practice of chiropractic without a license or registration under the Chiropractic Act. After notice and opportunity for a [an informal] hearing, the Enforcement Committee may issue a cease and desist order in the name of the board prohibiting the person from engaging in that activity. The Enforcement Committee may take all actions necessary and proper to carry out the Board's authority under Texas Occupations Code §201.6015, relating to cease and desist orders.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2015.

TRD-201503352

Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 305-6715



CHAPTER 79. SOAH HEARINGS

22 TAC §79.2

The Texas Board of Chiropractic Examiners (Board) proposes amending Chapter 79, §79.2, concerning Commencement of Enforcement Proceedings. The proposed amended rule is necessary in order to update procedures in accordance with the Administrative Procedure Act.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed amended rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the proposed amendment of the rule.

Ms. Yarbrough has determined that for the first five-year period the proposed amended rule is in effect, the public benefit expected as a result of the proposed amended rule will be clarifying the present rule resulting in clearer guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed amended rule will not have an adverse economic effect on small businesses or individuals because the proposed amended rule does not impose any duties or obligations upon small businesses or individuals.

This rule was proposed for publication at the Board's meeting on May 20, 2015. The proposed language was published on the Rules Committee and the Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meetings prior to this publication in the *Texas Register*. No comments were received regarding this amendment.

Comments on the proposed amended rule and/or a request for a public hearing on the proposed amended rule may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705; or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The Board is further authorized to adopt rules based upon the relevant portions of the Administrative Procedure Act, Government Code Chapter 2001.

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

§79.2. *Commencement of Enforcement Proceedings.*

(a) Filing with SOAH. Board staff will file a Request to Docket Case Form, as required by SOAH rules, with the SOAH for an enforcement case referred for formal hearing under §78.8(c) of this title (relating to Rules of Practice).

(b) Notice. The respondent shall be entitled to reasonable notice of a hearing of not less than ten days prior to the hearing as provided by the APA, §2001.051. The notice shall contain a citation to 1 TAC Chapter 155 (relating to SOAH Rules of Procedure) and include the matters specifically required by §2001.052, as follows:

- (1) a statement of the time, place, and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction under which the hearing is being held;
- (3) a reference to the particular sections of the Chiropractic Act, other law or rules which the respondent is alleged to have violated; and

(4) a short and plain statement of the acts relied on by the board as a violation of the cited law and rules.

(c) Service. The notice of hearing and the formal complaint by the board shall be served on the respondent, at the last known address of the respondent. Service on the respondent shall be complete and effective if service is by registered or certified mail and by regular mail, at the current business or mailing address of the respondent on file with board.

(d) Alternative Methods of Service. Upon agreement of the party to be notified, the Board may utilize electronic means sent to the current electronic-mail or telecopier number of the party's attorney of record or of the party if the party is not represented by counsel.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2015.

TRD-201503332

Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 305-6715



22 TAC §79.10

The Texas Board of Chiropractic Examiners (Board) proposes amending Chapter 79, §79.10, concerning Decision of the Board. The proposed amended rule is necessary in order to update procedures in accordance with the Administrative Procedure Act.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed amended rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the proposed amendment of the rule.

Ms. Yarbrough has determined that for the first five-year period the proposed amended rule is in effect, the public benefit expected as a result of the proposed amended rule will be clarifying the present rule resulting in clearer guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed amended rule will not have an adverse economic effect on small businesses or individuals because the proposed amended rule does not impose any duties or obligations upon small businesses or individuals.

This rule was proposed for publication at the Board's meeting on May 20, 2015. The proposed language was published on the Rules Committee and the Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meetings prior to this publication in the *Texas Register*. No comments were received regarding this amendment.

Comments on the proposed amended rule and/or a request for a public hearing on the proposed amended rule may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705; or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

The amendment is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The Board is further authorized to adopt rules based upon the relevant portions of the Administrative Procedure Act, Government Code Chapter 2001.

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

§79.10. *Decision of the Board.*

(a) The board shall render the final decision in all cases, including the denial of a license or registration, revocation, temporary suspension, reprimand, and/or administrative penalties. The final order of the board shall be in writing. A party or the ALJ may submit to the board a proposed order based on the proposal for decision for consideration by the board. The board, with the advice of its legal counsel, will determine the form and content of the board's final order.

(b) The proposal for decision may be acted on by the board after the expiration of 10 business days after the filing of replies to exceptions to the proposal for decision.

(c) It is the policy of the board that it may change recommended findings of fact or conclusions of law in a proposal for decision, or vacate or modify an order issued by the ALJ when the board determines:

(1) that the ALJ did not properly apply or interpret applicable law or rules, board policies or prior administrative decisions;

(2) that a prior administrative decision of the board on which the ALJ relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

(d) If the board modifies, amends, or changes a recommended finding of fact or conclusion of law, or order of the ALJ, the board's final order shall state the legal basis and the specific reasons for the change.

(e) A copy of the final order shall be mailed to all parties.

(f) The decision of the board is immediate, final and appealable upon the signing of the written order by the board where:

(1) the board finds and states in the order that an imminent peril to the public health, safety, and welfare requires immediate effect of the order; and

(2) the order states it is final and effective on the date rendered.

(g) Motions for rehearing are governed by the APA, Subchapter F. A motion for rehearing and replies to a motion shall be filed with the board, with a copy to the opposing party and the ALJ.

(h) Alternative Methods of Service. Upon agreement of the party to be notified, the Board may utilize electronic means sent to the current electronic-mail or telecopier number of the party's attorney of record or of the party if the party is not represented by counsel.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2015.
TRD-201503335

Bryan Snoddy
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: October 4, 2015
For further information, please call: (512) 305-6715

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CHAPTER 80. GENERAL REGULATORY
PROVISIONS

22 TAC §80.5

The Texas Board of Chiropractic Examiners (Board) proposes new §80.5, concerning Contract Monitoring. The new rule is necessary in order to comply with Legislative requirements regarding contract monitoring.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Yarbrough has determined that for the first five-year period the proposed rule is in effect, the public benefit expected as a result of the proposed rule will be greater public confidence in the administration of government and clear guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed rule will not have an adverse economic effect on small businesses or individuals because the rule does not impose any duties or obligations upon small businesses or individuals.

This rule was proposed for publication at the Board's meeting on May 20, 2015. The proposed language was published on the Rules Committee and the Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meetings prior to this publication in the *Texas Register*. No comments were received concerning the proposal of this rule and its organization.

Comments on the proposed rule and/or a request for a public hearing on the proposed rule may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705; or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed rules are published in the *Texas Register*.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The rule is also proposed pursuant to Texas Government Code Chapters 2261 and 2262 that legislatively mandate the adoption of certain provisions.

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

§80.5. *Contract Monitoring.*

(a) Contract monitoring, when applicable, is primarily conducted by the administrative staff of the Board under the authority and direction of Government Code §2261.202.

(b) The Board's chief financial officer is responsible for maintaining a record of contracts requiring enhanced contract or performance monitoring, as defined in Government Code §2261.253, for submission to the Board.

(c) The Board's chief financial officer shall immediately notify the Board or the executive director, as appropriate, of any serious issue or risk that is identified with respect to a contract monitored under subsection (c) of Government Code §2261.253.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2015.

TRD-201503328

Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 305-6715



22 TAC §80.6

The Texas Board of Chiropractic Examiners (Board) proposes new §80.6, concerning Tuition Reimbursement Payments. The new rule is necessary in order to comply with Legislative requirements regarding job notices and training.

Yvette Yarbrough, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Yarbrough has determined that for the first five-year period the proposed rule is in effect, the public benefit expected as a result of the proposed rule will be greater public confidence in the administration of government and clear guidance for the public and stakeholders.

Ms. Yarbrough has also determined that the proposed rule will not have an adverse economic effect on small businesses or individuals because the rule does not impose any duties or obligations upon small businesses or individuals.

This rule was proposed for publication at the Board's meeting on May 20, 2015. The proposed language was published on the Rules Committee and the Board agenda. Comment on the proposal was sought during the Rules Committee and the Board meetings prior to this publication in the *Texas Register*. No comments were received concerning the proposal of this rule and its organization.

Comments on the proposed rule and/or a request for a public hearing on the proposed rules may be submitted to Bryan D. Snoddy, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe St, Tower III, Suite 825, Austin, Texas 78701; fax: (512) 305-6705; or rules@tbce.state.tx.us, no later than 30 days from the date that this proposed rule is published in the *Texas Register*.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The rule is also proposed pursuant to Texas Government Code Chapter 656 that legislatively mandate the adoption of certain provisions.

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

§80.6. Tuition Reimbursement Payments.

(a) Pursuant to Texas Government Code Chapter 656 (regarding Job Notices and Training), the Board may spend public funds as appropriate to pay the salary, tuition and other fees, travel and living expenses, training stipend, expense of training materials, and other necessary expenses of an instructor, student or other participant in a training or education program.

(b) An administrator or employee of the Board may seek reimbursement for a training or education program offered by an institution of higher education or private or independent institution of higher education as defined by §61.003 of the Texas Education Code. Such reimbursement shall be conditioned upon the successful completion by the administrator or employee of the program course at an accredited institution of higher education.

(c) Reimbursement tuition payments must be authorized by the Board's executive director prior to the disbursement of payment.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2015.

TRD-201503351

Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 305-6715



PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.6

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

The State Board of Dental Examiners (Board) proposes the repeal of 22 TAC §101.6, concerning dental licensing for military service members, military veterans, and military spouses.

The agency seeks to repeal §101.6 and replace it with proposed new §101.6, which has better organization and brings the rule into compliance with Senate Bills 1307 and 807.

Nycia Deal, Interim Executive Director, has determined that for the first five-year period the proposed repeal is in effect, the repealed rule will not have foreseeable implications relating to cost or revenue of state or local government.

Ms. Deal has also determined that for the first five-year period the proposed repeal is in effect, the repealed rule will ensure the protection of public health and safety. Ms. Deal has determined that for the first five-year period the proposed repeal is in effect, the repealed rule will not have foreseeable economic costs to persons or small businesses who are required to comply with the rule. There is no foreseeable impact on employment in any regional area where the repealed rule is enforced or administered.

Comments on the proposed repeal may be submitted to Simone Salloum, Assistant General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, fax (512) 463-7452, and rulecomments@tsbde.texas.gov, no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The repeal is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

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

§101.6. Dental Licensing for Military Service Members, Military Veterans, and Military Spouses.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 17, 2015.

TRD-201503163

Nycia Deal

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 475-0977



22 TAC §101.6

The State Board of Dental Examiners (Board) proposes new §101.6, concerning dental licensing for military service members, military veterans, and military spouses. The new rule includes requirements of Senate Bills 1307 and 807 (84th Leg.) related to occupational licensing for military service members, military veterans, and military spouses. Instead of proposing amendments to former rule §101.6, Board Staff re-organized the structure of the rule and determined that it was best to propose §101.6 as a new rule.

Nycia Deal, Interim Executive Director, has determined that for the first five-year period the proposed rule is in effect, the only fiscal implication as a result of enforcing or administering the amendments to the rule is that the state will no longer be collecting fees related to the licensure application for certain military applicants. In addition, the state will not collect penalties or increase fees for military service members who failed to timely renew due to their service.

Ms. Deal has determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to help military service members, spouses, and veterans obtain licenses from the Board in a timely fashion and will account for their military experience. Ms. Deal has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses is minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed new rule may be submitted to Simone Salloum, Assistant General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

These amendments are proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

The following statutes are affected by this proposal: Texas Occupations Code Chapter 55.

§101.6. Dental Licensing for Military Service Members, Military Veterans, and Military Spouses.

(a) Definitions.

(1) "Active duty" means current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by Section 471.001, Government Code, or similar military service of another state.

(2) "Armed forces of the United States" means the army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) "Military service member" means a person who is on active duty.

(4) "Military spouse" means a person who is married to a military service member.

(5) "Military veteran" means a person who has served on active duty and who was discharged or released from active duty.

(b) A licensee is exempt from any penalty or increased fee imposed by the Board for failing to renew the license in a timely manner if the individual establishes to the satisfaction of Board staff that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

(c) A licensee who is a military service member is entitled to two years of additional time to complete:

(1) any continuing education requirements; and

(2) any other requirement related to the renewal of the military service member's license.

(d) Alternative Licensing.

(1) A military service member, military veteran, or military spouse applicant may demonstrate competency by alternative methods in order to meet the requirements for obtaining a dental license issued by the Board if the applicant:

(A) holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the licensing requirements in this state; or

(B) within the five years preceding the application date held the license in this state.

(2) For purposes of this section, the standard method of demonstrating competency is the specific examination, education, and or/experience required to obtain a dental license. In lieu of the standard method(s) of demonstrating competency for a dental license and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the Board:

(A) education;

(B) continuing education;

(C) examinations (written and/or practical);

(D) letters of good standing;

- (E) letters of recommendation;
- (F) work experience; or
- (G) other methods required by the Executive Director.

(3) The executive director may waive any prerequisite to obtaining a license for an applicant described in paragraph (1) of this subsection after reviewing the applicant's credentials.

(e) The Board shall give credit to an applicant who is a military service member or military veteran for any verified military service, training, or education toward the licensing requirements, other than an examination requirement, including, but not limited to, education, training, certification, or a course in basic life support. The Board may not give credit if the applicant holds a restricted license issued by another jurisdiction or has an unacceptable criminal history according to Texas Occupations Code, Chapter 53 (relating to Consequences of Criminal Conviction) or §101.8 of this title (relating to Persons with Criminal Backgrounds).

(f) The Board shall process an application from a military service member, military veteran, or military spouse as soon as practicable after receiving the application.

(g) All applicants shall submit an application and proof of any relevant requirements on a form and in a manner prescribed by the Board.

(h) All applicants shall submit fingerprints for the retrieval of criminal history record information.

(i) All fees associated with a license application shall be waived for an applicant who is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for licensure in this state.

(j) Licenses granted under this chapter have the terms established by §101.5 of this title (related to Staggered Dental Registrations), or a term of 12 months from the date the license is issued, whichever term is longer. The Board shall notify the licensee in writing or by electronic means of the requirements for renewal.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 17, 2015.

TRD-201503164

Nycia Deal

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 475-0977



CHAPTER 102. FEES

22 TAC §102.1

The State Board of Dental Examiners (Board) proposes amendments to §102.1, concerning the Board's fee schedule. Some of the amendments are proposed in order to comply with House

Bill 7 that was passed during the 84th Legislative Session. Other amendments conform the fee schedule to existing statutory fee requirements or reflect fee reductions that the agency is able to absorb.

Nycia Deal, Interim Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for local government as a result of enforcing or administering the amendments to the rule. Ms. Deal has determined that the fiscal implications for state government are no more than the changes to the relevant fees listed in the rule.

Ms. Deal has also determined that for the first five-year period the proposed rule is in effect, the public benefits anticipated as a result of administering this section will be to ensure that the Board is compliant with its statutory fee-related obligations and to provide funding for the administrative functions of the Board. Ms. Deal has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses who are required to comply with the rule is no more than the relevant fees listed in the rule. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed new rule may be submitted to Simone Salloum, Assistant General Counsel, by mail at 333 Guadalupe, Suite 3-800, Austin, Texas 78732, fax at (512) 463-7452, and email at rulecomments@tsbde.texas.gov. Comments must be received no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

These amendments are proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety. These amendments are also proposed under Texas Occupations Code §§101.307, 254.004(b) and (c), 257.002(d-1), Texas Government Code §2054.252(e), and Texas Health and Safety Code §467.0041, which give the Board authority to establish and charge fees. No other statutes, articles, or codes are affected by the rule.

§102.1. Fee Schedule.

Effective September 1, 2015, the [The] Board has established the following reasonable and necessary fees for the administration of its function.

Figure: 22 TAC §102.1

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Nycia Deal

General Counsel

State Board of Dental Examiners

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For further information, please call: (512) 475-0977



CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

22 TAC §114.5

The State Board of Dental Examiners (Board) proposes amendments to §114.5, concerning the coronal polishing certificate. The amendments provide that applicants may complete coronal polishing education at dental schools and dental hygiene schools accredited by CODA in addition to dental assisting programs, as required by House Bill 2849 (84th Leg.)

Nycia Deal, Interim Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will not be any fiscal implications for state or local government as a result of enforcing or administering the amendments to the rule.

Ms. Deal has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of administering this section will be to provide more options for applicants regarding their coronal polishing education. Ms. Deal has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses will be minimal. There is no foreseeable impact on employment in any regional area where the rule is enforced or administered.

Comments on the proposed new rule may be submitted to Simone Salloum, Assistant General Counsel, 333 Guadalupe, Suite 3-800, Austin, Texas 78732, Fax (512) 463-7452, rulecomments@tsbde.texas.gov no later than 30 days from the date that the proposed rule is published in the Texas Register.

These amendments are proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

The following statutes are affected by this proposal: Texas Occupations Code §265.005.

§114.5. *Coronal Polishing Certificate.*

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

(d) A dental assistant seeking certification under this section must:

(1) pay an application fee set by board rule; and

(2) on a form prescribed by the Board, provide proof that the applicant has:

(A) at least two years experience as a dental assistant; and either

(B) completed a minimum of eight (8) hours of clinical and didactic education in coronal polishing taken through a dental school, dental hygiene school, or dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Board. The education must include [that includes] courses on:

(i) oral anatomy and tooth morphology relating to retention of plaque and stain;

(ii) indications, contraindications, and complications of coronal polishing;

(iii) principles of coronal polishing, including armamentarium, operator and patient positioning, technique, and polishing agents;

(iv) infection control procedures;

(v) polishing coronal surfaces of teeth; and

(vi) jurisprudence relating to coronal polishing; or

(C) present proof to the Board that the assistant has either:

(i) graduated from a dental assisting program accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board that includes specific didactic course work and clinical training in coronal polishing; or

(ii) received certification of completion of requirements specified by the Dental Assisting National Board and approved by the Board.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 17, 2015.

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Nycia Deal

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 475-0977



PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

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

22 TAC §153.5

The Texas Appraiser Licensing and Certification Board (TALCB or Board) proposes amendments to 22 TAC §153.5. Fees. The amendments align this section with statutory changes adopted by the 84th Legislature and add a provision for the Board to collect fees for providing certified copies.

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

Ms. Worman also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections as proposed will be a requirement that is consistent with the statute and easier to understand, apply and process.

Comments on the proposal may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1103.151, which authorizes the TALCB to adopt rules relating to certificates and licenses, and §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualifications Board.

The statute affected by these amendments is Texas Occupations Code, Chapter 1103. No other statute, code or article is affected by the proposed amendments.

§153.5. Fees.

(a) The Board shall charge and the Commissioner shall collect the following fees:

(1) a fee of \$400 for an application for a certified general appraiser license;

(2) a fee of \$350 for an application for a certified residential appraiser license;

(3) a fee of \$325 for an application for a licensed residential [state] appraiser license;

(4) a fee of \$300 for an application for an appraiser trainee license;

(5) a fee of \$360 for a timely renewal of a certified general appraiser license;

(6) a fee of \$310 for a timely renewal of a certified residential appraiser license;

(7) a fee of \$290 for a timely renewal of a licensed residential [state] appraiser license;

(8) a fee of \$250 for a timely renewal of an appraiser trainee license;

(9) a fee equal to 1-1/2 times the timely renewal fee for the late renewal of a license within 90 days of expiration;

(10) a fee equal to two times the timely renewal fee for the late renewal of a license more than 90 days but less than six months after expiration;

(11) a fee of \$250 for nonresident license;

(12) the national registry fee in the amount charged by the Appraisal Subcommittee;

(13) an application fee for licensure by reciprocity in the same amount as the fee charged for a similar license issued to a Texas resident;

(14) a fee of \$40 for preparing a certificate of licensure history, active licensure, or supervision [sponsorship];

(15) a fee of \$20 for an addition or termination of sponsorship of an appraiser trainee;

(16) a fee of \$20 for replacing a lost or destroyed license;

(17) a fee for a returned check equal to that charged for a returned check by the Texas Real Estate Commission;

(18) a fee of \$200 for an extension of time to complete required continuing education;

(19) a fee of \$25 to request a license be placed on inactive status;

(20) a fee of \$50 to request a return to active status;

(21) a fee of \$50 for evaluation of an applicant's criminal history;

(22) an examination fee as provided in the Board's current examination administration agreement;

(23) a fee of \$20 per certification when providing certified copies of documents;

(24) [~~(23)~~] a fee of \$20 for filing any application, renewal, change request, or other record on paper when the person may otherwise file electronically by accessing the Board's website and entering the required information online; and

(25) [~~(24)~~] any fee required by the Department of Information Resources for establishing and maintaining online applications.

(b) Fees must be submitted in U.S. funds payable to the order of the Texas Appraiser Licensing and Certification Board. Fees are not refundable once an application has been accepted for filing. Persons who have submitted a check which has been returned, and who have not made good on that check within thirty days, for whatever reason, shall submit all future fees in the form of a cashier's check or money order.

(c) Licensing fees are waived for members of the Board staff who must maintain a license for employment with the Board only and are not also using the license for outside employment.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 18, 2015.

TRD-201503190

Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 936-3652



22 TAC §153.9

The Texas Appraiser Licensing and Certification Board (TALCB or Board) proposes amendments to 22 TAC §153.9. Applications. The proposed amendments align the rule with statutory changes to Chapters 55 and 1103, Texas Occupations Code, adopted by the 84th Legislature.

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

Ms. Worman also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections as proposed will be requirements that are consistent with the statute and easier to understand, apply and process.

Comments on the proposal may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed under Texas Occupations Code, §1103.151, which authorizes the TALCB to adopt rules relating to certificates and licenses, and §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualifications Board.

The statute affected by these amendments is Texas Occupations Code, Chapter 1103. No other statute, code or article is affected by the proposed amendments.

§153.9. *Applications.*

(a) A person desiring to be licensed as an appraiser, appraiser trainee, or temporary out-of-state appraiser shall file an application using forms prescribed by the Board or the Board's online application system, if available. The Board may decline to accept for filing an application that is materially incomplete or that is not accompanied by the appropriate fee. Except as provided by the Act, the Board may not grant a license to an applicant who has not:

- (1) paid the required fees;
- (2) satisfied any experience and education requirements established by the Act, Board rules, or the AQB;
- (3) successfully completed any qualifying examination prescribed by the Board;
- (4) provided all supporting documentation or information requested by the Board in connection with the application;
- (5) satisfied all unresolved enforcement matters and requirements with the Board; and
- (6) met any additional or superseding requirements established by the Appraisal Qualifications Board.

(b) An application may be considered void and subject to no further evaluation or processing if an applicant fails to provide information or documentation within 60 days after the Board makes a written request for the information or documentation.

(c) A license is valid for the term for which it is issued by the Board unless suspended or revoked for cause and unless revoked, may be renewed in accordance with the requirements of §153.17 of this title (relating to Renewal or Extension of Certification and License or Renewal of Trainee Approval).

(d) The Board may deny a license to an applicant who fails to satisfy the Board as to the applicant's honesty, trustworthiness, and integrity.

(e) The Board may deny a license to an applicant who submits incomplete, false, or misleading information on the application or supporting documentation.

(f) When an application is denied by the Board, no subsequent application will be accepted within two years [~~one year~~] after the date of the Board's notice of denial [~~denying the application~~] as required in §157.7 of this title [~~relating to Denial of a License~~].

(g) This subsection applies to an applicant who is a military service member, a military veteran, or the spouse of a person serving on active duty as a member of the armed forces of the United States.

(1) The Board shall waive the license application and examination fees for an applicant who is:

(A) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(B) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(2) [(4)] The Board shall issue on an expedited basis a license to an applicant who holds a current license issued by another state or jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license issued in this state.

(3) [(2)] The Board may issue a license to an applicant who within the five years preceding the application date, held the license in this state [~~that expired while the applicant lived in a country, territory, or state other than Texas for at least six months~~].

(4) [(3)] The Board may allow an applicant to demonstrate competency by alternative methods in order to meet the requirements for obtaining a particular license issued by the Board. For purposes of this subsection, the standard method of demonstrating competency is the specific examination, education, and/or experience required to obtain a particular license.

(5) [(4)] In lieu of the standard method(s) of demonstrating competency for a particular license and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the Board:

- (A) education;
- (B) continuing education;
- (C) examinations (written and/or practical);
- (D) letters of good standing;
- (E) letters of recommendation;
- (F) work experience; or
- (G) other methods required by the commissioner.

(h) This subsection applies to an applicant who is serving on active duty or is a veteran of the armed forces of the United States.

(1) The Board will credit any verifiable military service, training or education obtained by an applicant that is relevant to a license toward the requirements of a license.

(2) This subsection does not apply to an applicant who holds a restricted license issued by another jurisdiction.

(3) The applicant must pass the qualifying examination, if any, for the type of license sought.

(4) The Board will evaluate applications filed by an applicant who is serving on active duty or is a veteran of the armed forces of the United States consistent with the criteria adopted by the AQB and any exceptions to those criteria as authorized by the AQB.

(i) A person applying for license under subsection (g) or (h) of this section must also:

- (1) submit the Board's approved application form for the type of license sought;
- (2) submit the appropriate fee for that application; and
- (3) submit the supplemental form approved by the Board applicable to subsection (g) or (h) of this section.

(j) The commissioner may waive any prerequisite to obtaining a license for an applicant as allowed by the AQB [~~issue a license under subsection (e) or (d) by endorsement in the same manner as the~~].

Texas Department of Licensing and Regulation to an applicant under this subsection].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 18, 2015.

TRD-201503191

Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 936-3652



22 TAC §153.16

The Texas Appraiser Licensing and Certification Board (TALCB or Board) proposes a new rule 22 TAC §153.16. License Reinstatement. The proposed rule allows persons who previously held a license issued by the Board to reinstate an expired license as authorized by the Appraiser Qualifications Board (AQB).

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

Ms. Worman also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections as proposed will be requirements that allow former license holders a means to return to the profession, which are consistent with state and federal law.

Comments on the proposal may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed under Texas Occupations Code, §1103.151, which authorizes TALCB to adopt rules relating to certificates and licenses, and §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the AQB.

The statute affected by these amendments is Texas Occupations Code, Chapter 1103. No other statute, code or article is affected by the proposed amendments.

§153.16. License Reinstatement.

(a) This section applies only to a person who:

(1) previously held an appraiser license issued by the Board that has expired; and

(2) seeks to obtain the same level of appraiser license previously held by the person before its expiration.

(b) A person described in subsection (a) may apply to reinstate the person's former license by:

(1) submitting an application for reinstatement on a form approved by the Board;

(2) paying the applicable fee;

(3) satisfying the Board as to the person's honesty, trustworthiness and integrity; and

(4) satisfying the experience requirements in this section.

(c) Applicants for reinstatement under this section must demonstrate completion of 14 hours of appraiser continuing education for each year since the last renewal of the person's previous license.

(d) Applicants for reinstatement must demonstrate that their appraisal experience complies with USPAP as follows:

(1) Persons who have work files/license expired less than 5 years. A person described in subsection (a) who has appraisal work files and whose previous license has been expired less than five years may apply to reinstate the person's previous license by submitting an experience log as follows:

(A) For reinstatement as a licensed residential appraiser, a minimum of 10 appraisal reports representing at least 200 hours of real estate appraisal experience.

(B) For reinstatement as a certified residential real estate appraiser, a minimum of 10 residential appraisal reports representing at least 250 hours of residential real estate appraisal experience.

(C) For reinstatement as a certified general appraiser, a minimum of 10 non-residential appraisal reports representing at least 300 hours of non-residential real estate appraisal experience.

(2) Persons who do not have work files/license expired more than 5 years.

(A) A person described in subsection (a) who does not have appraisal work files or whose previous license has been expired for more than five years may apply for a license as an appraiser trainee for the purpose of acquiring the appraisal experience required under this subsection.

(B) An appraiser trainee licensed under this section may apply for reinstatement at the same level of appraiser license that the applicant previously held, after the applicant completes the required number of appraisal reports or hours of real estate appraisal experience as follows:

(i) For reinstatement as a licensed residential appraiser, the applicant must complete a minimum of 10 appraisal reports or 200 hours of real estate appraisal experience, whichever is more.

(ii) For reinstatement as a certified residential appraiser, the applicant must complete a minimum of 10 residential appraisal reports or 250 hours of residential real estate appraisal experience, whichever is more.

(iii) For reinstatement as a certified general appraiser, the applicant must complete a minimum of 10 non-residential appraisal reports or 300 hours of non-residential real estate appraisal experience, whichever is more.

(B) Upon completion of the required number of appraisal reports or hours of real estate appraisal experience, the applicant must submit an experience log.

(e) Consistent with section 153.15, the Board will evaluate each applicant's real estate appraisal experience for compliance with USPAP based on the submitted experience log.

(f) For those persons described in subsection (a) the Board may waive the following requirements:

- (1) Proof of qualifying education;
- (2) College education or degree requirement; and
- (3) Examination.

(g) Consistent with this chapter, upon review of the applicant's real estate appraisal experience, the Board may:

- (1) Reinstate the applicant's previous appraiser license;
- (2) Reinstate the applicant's previous appraiser license, contingent upon completion of additional education, experience or mentorship; or
- (3) Deny the application.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

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For further information, please call: (512) 936-3652



22 TAC §153.17

The Texas Appraiser Licensing and Certification Board (TALCB or Board) proposes amendments to 22 TAC §153.17. Renewal or Extension of License. The proposed amendments align the rule with statutory changes to Chapters 55 and 1103, Texas Occupations Code, adopted by the 84th Legislature.

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

Ms. Worman also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections as proposed will be requirements that are consistent with the statute and easier to understand, apply and process.

Comments on the proposal may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1103.151, which authorizes the TALCB to adopt rules relating to certificates and licenses, and §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualifications Board.

The statute affected by these amendments is Texas Occupations Code, Chapter 1103. No other statute, code or article is affected by the proposed amendments.

§153.17. *Renewal or Extension of License.*

(a) General Provisions.

(1) The Board will send a renewal notice to the license holder at least 90 days prior to the expiration of the license. It is the responsibility of the license holder to apply for renewal in accordance with this chapter, and failure to receive a renewal notice from the Board does not relieve the license holder of the responsibility to timely apply for renewal.

(2) A license holder renews the license by timely filing an application for renewal, paying the appropriate fees to the Board, and satisfying all applicable education and experience requirements.

(3) An application for renewal or extension received by the Board is timely and acceptable for processing if it is:

(A) complete;

(B) accompanied with payment of proper fees; and

(C) postmarked by the U.S. Postal Service, accepted by an overnight delivery service, or accepted by the Board's online processing system on or before the date of expiration.

(b) Certified General, Certified Residential and Licensed Residential Appraisers [~~State Appraiser License Holders~~].

(1) A license holder may renew the license by timely filing an application for renewal, paying the appropriate fees to the Board and, unless renewing on inactive status, satisfying ACE requirements.

(2) In order to renew on active status, the license holder must complete the ACE report form approved by the Board and, within 20 days of filing the renewal, submit course completion certificates for each course that was not already submitted by the provider and reflected in the license holder's electronic license record.

(A) The Board may request additional verification of ACE submitted in connection with a renewal. If requested, such documentation must be provided within 20 days after the date of request.

(B) Knowingly or intentionally furnishing false or misleading ACE information in connection with a renewal is grounds for disciplinary action up to and including license revocation.

(3) The Board may grant, at the time it issues a license renewal, an extension of time of up to 60 days after the expiration date of the previous license to complete ACE required to renew a license, subject to the following:

(A) The license holder must:

(i) timely submit the completed renewal form with the appropriate renewal fees;

(ii) complete an extension request form; and

(iii) pay an extension fee of \$200.

(B) ACE courses completed during the 60-day extension period apply only to the current renewal and may not be applied to any subsequent renewal of the license.

(C) A person whose license was renewed with a 60-day ACE extension:

(i) will not perform appraisals in a federally related transaction until verification is received by the Board that the ACE requirements have been met;

(ii) may continue to perform appraisals in non-federally related transactions under the renewed license;

(iii) must, within 60 days after the date of expiration of the previous license, complete the approved ACE report form and submit course completion certificates for each course that was not already submitted by the provider and reflected in the applicant's electronic license record; and

(iv) will have the renewed license placed in inactive status if, within 60 days of the previous expiration date, ACE is not completed and reported in the manner indicated in paragraph (2) of this subsection. The renewed license will remain on inactive status until satisfactory evidence of meeting the ACE requirements has been received by the Board and the fee to return to active status required by §153.5 of this title (relating to Fees) has been paid.

(c) Appraiser Trainees.

(1) Appraiser trainees must maintain an appraisal log and appraisal experience affidavits on forms approved by the Board, for the license period being renewed. It is the responsibility of both the appraiser trainee and the supervisory appraiser [sponsor] to ensure the appraisal log is accurate, complete and signed by both parties at least quarterly or upon change in supervisory appraiser [sponsors]. The appraiser trainee will promptly provide copies of the experience logs and affidavits to the Board upon request.

(2) Appraiser trainees may not obtain an extension of time to complete required continuing education.

(d) Renewal of Licenses for Persons on Active Duty. A person who is on active duty in the United States armed forces may renew an expired license without being subject to any increase in fee imposed in his or her absence, or any additional education or experience requirements if the person:

(1) did not provide appraisal services while on active duty;

(2) provides a copy of official orders or other documentation acceptable to the Board showing the person was on active duty during the last renewal period;

(3) applies for the renewal within two years [90 days] after the person's active duty ends;

(4) pays the renewal application fees in effect when the previous license expired; and

(5) completes ACE requirements that would have been imposed for a timely renewal.

(e) Late Renewal [Expiration and Reapplication]. If an application is filed within six months of the expiration of a previous license, the applicant shall also provide satisfactory evidence of completion of any continuing education that would have been required for a timely renewal of the previous license. ~~[If the application for license is filed more than six months after the expiration of the previous license, the applicant must meet all then-current requirements for license, including retaking and passing the examination.]~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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22 TAC §153.20

The Texas Appraiser Licensing and Certification Board (TALCB or Board) proposes amendments to 22 TAC §153.20. Guidelines for Revocation, Suspension, Denial of License; Probationary License. The amendments propose changes regarding compliance with an agreed order of the Board and the statute of limitations for investigating a complaint to align the rule with statutory changes to Chapter 1103, Texas Occupations Code, adopted by the 84th Legislature.

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

Ms. Worman also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections as proposed will be a requirement that is consistent with the statute and easier to understand, apply and process.

Comments on the proposal may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1103.151, which authorizes the TALCB to adopt rules relating to certificates and licenses, and §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualifications Board.

The statute affected by these amendments is Texas Occupations Code, Chapter 1103. No other statute, code or article is affected by the proposed amendments.

§153.20. Guidelines for Revocation, Suspension, Denial of License; Probationary License.

(a) The Board may suspend or revoke a license or deny issuing a license to an applicant at any time the Board determines that the applicant or license holder:

(1) disregards or violates a provision of the Act or the Board rules;

(2) is convicted of a felony;

(3) fails to notify the Board not later than the 30th day after the date of the final conviction if the person, in a court of this or another state or in a federal court, has been convicted of or entered a plea of guilty or nolo contendere to a felony or a criminal offense involving fraud or moral turpitude;

(4) fails to notify the Board not later than the 30th day after the date of incarceration if the person, in this or another state, has been incarcerated for a criminal offense involving fraud or moral turpitude;

(5) fails to notify the Board not later than the 30th day after the date disciplinary action becomes final against the person with regard to any occupational license the person holds in Texas or any other jurisdiction;

(6) fails to comply with the USPAP edition in effect at the time of the appraiser service;

(7) acts or holds himself or herself or any other person out as a person licensed [~~real estate appraiser~~] under the Act when not so licensed;

(8) accepts payment for appraiser services but fails to deliver the agreed service in the agreed upon manner;

(9) refuses to refund payment received for appraiser services when he or she has failed to deliver the appraiser service in the agreed upon manner;

(10) accepts payment for services contingent upon a minimum, maximum, or pre-agreed value estimate except when such action would not interfere with the appraiser's obligation to provide an independent and impartial opinion of value and full disclosure of the contingency is made in writing to the client;

(11) offers to perform appraiser services or agrees to perform such services when employment to perform such services is contingent upon a minimum, maximum, or pre-agreed value estimate except when such action would not interfere with the appraiser's obligation to provide an independent and impartial opinion of value and full disclosure of the contingency is made in writing to the client;

(12) makes a material misrepresentation or omission of material fact;

(13) has had a license as an appraiser revoked, suspended, or otherwise acted against by any other jurisdiction for an act which is a crime under Texas law;

(14) procures, or attempts to procure, a license by making false, misleading, or fraudulent representation;

(15) fails to actively, personally, and diligently supervise an appraiser trainee or any person not licensed under the Act who assists the license holder in performing real estate appraiser services;

(16) has had a final civil judgment entered against him or her on any one of the following grounds:

(A) fraud;

(B) intentional or knowing misrepresentation;

(C) grossly negligent misrepresentation in the performance of appraiser services;

(17) fails to make good on a payment issued to the Board within thirty days after the Board has mailed a request for payment by certified mail to the license holder's last known business address as reflected by the Board's records;

(18) knowingly or willfully engages in false or misleading conduct or advertising with respect to client solicitation;

(19) acts or holds himself or any other person out as a person licensed [~~real estate appraiser~~] under this or another state's Act when not so licensed;

(20) misuses or misrepresents the type of classification or category of license number;

(21) engages in any other act relating to the business of appraising that the Board, in its discretion, believes warrants a suspension or revocation;

(22) uses any title, designation, initial or other insignia or identification that would mislead the public as to that person's credentials, qualifications, competency, or ability to perform licensed appraisal services;

(23) fails to comply with an agreed order or a final order of the Board;

(24) fails to answer all inquiries concerning matters under the jurisdiction of the Board within 20 days of notice to said individual's address of record, or within the time period allowed if granted a written extension by the Board; or

(25) after conducting reasonable due diligence, knowingly accepts an assignment from an appraisal management company that is not exempt from registration under the Act which:

(A) has not registered with the Board; or

(B) is registered with the Board but has not placed the appraiser on its panel of appraisers maintained with the Board; or

(26) fails to approve, sign, and deliver to their appraiser trainee the appraisal experience log and affidavit required by §153.15(f)(1) and §153.17(c)(1) of this title for all experience actually and lawfully acquired by the trainee while under the appraiser's sponsorship.

(b) The Board has discretion in determining the appropriate penalty for any violation under subsection (a) of this section.

(c) The Board may probate a penalty or sanction, and may impose conditions of the probation, including, but not limited to:

(1) the type and scope of appraisals or appraisal practice;

(2) the number of appraiser trainees or authority to sponsor appraiser trainees;

(3) requirements for additional education;

(4) monetary administrative penalties; and

(5) requirements for reporting real property appraisal activity to the Board.

(d) A person applying for reinstatement after revocation or surrender of a license must comply with all requirements that would apply if the license had instead expired.

(e) The provisions of this section do not relieve a person from civil liability or from criminal prosecution under the Act or other laws of this State.

(f) The Board may not investigate a complaint submitted to the Board more than four years after the date on which the alleged violation occurred [~~either more than two years after the date of discovery or more than two years after the completion of any litigation involving the incident, whichever event occurs later, involving the license holder who is the subject of the complaint~~].

(g) Except as provided by Texas Government Code §402.031(b) and Texas Penal Code §32.32(d), there shall be no undercover or covert investigations conducted by authority of the Act.

(h) A license may be revoked or suspended by the Attorney General or other court of competent jurisdiction for failure to pay child support under the provisions of Chapter 232 of the Texas Family Code.

(i) If the Board determines that issuance of a probationary license is appropriate, the order entered by the Board with regard to the application must set forth the terms and conditions for the probationary license. Terms and conditions for a probationary license may include any of the following:

(1) that the probationary license holder comply with the Act and with the rules of the Texas Appraiser Licensing and Certification Board;

(2) that the probationary license holder fully cooperate with the enforcement division of the Board in the investigation of any complaint filed against the license holder or any other complaint in which the license holder may have relevant information;

(3) that the probationary license holder attend a prescribed number of classroom hours in specific areas of study during the probationary period;

(4) that the probationary license holder limit appraisal practice as prescribed in the order;

(5) that the probationary license holder work under the direct supervision of a certified general or certified residential appraiser who will review and sign each appraisal report completed;

(6) that the probationary license holder report regularly to the Board on any matter which is the basis of the probationary license; or

(7) that the probationary license holder comply with any other terms and conditions contained in the order which have been found to be reasonable and appropriate by the Board after due consideration of the circumstances involved in the particular application.

(k) Unless the order granting a probationary license specifies otherwise, a probationary license holder may renew the license after the probationary period by filing a renewal application, satisfying applicable renewal requirements, and paying the prescribed renewal fee.

(l) If a probationary license expires prior to the completion of a probationary term and the probationary license holder files a late renewal application, any remaining probationary period shall be reinstated effective as of the day following the renewal of the probationary license.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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22 TAC §153.21

The Texas Appraiser Licensing and Certification Board (TALCB or Board) proposes amendments to 22 TAC §153.21. Appraiser Trainees and Sponsors. The amendments propose changes to align the rule with statutory changes to Chapter 1103, Texas Occupations Code, adopted by the 84th Legislature.

Kristen Worman, General Counsel, has determined that for the first five-year period the proposed amendments are in effect,

there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the proposed amendments. There is no anticipated significant impact on small businesses, micro-businesses or local or state employment as a result of implementing the proposed amendments. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendments.

Ms. Worman also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections as proposed will be a requirement that is consistent with the statute and easier to understand, apply and process.

Comments on the proposal may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1103.151, which authorizes the TALCB to adopt rules relating to certificates and licenses, and §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualifications Board.

The statute affected by these amendments is Texas Occupations Code, Chapter 1103. No other statute, code or article is affected by the proposed amendments.

§153.21. Appraiser Trainees and Supervisory Appraisers [Sponsors].

(a) Supervision of appraiser trainees required. [A person desiring to be an appraiser trainee may apply to the Board on the approved application form for trainee authorization. In addition to the requirements set forth in §1103.353 of the Act, a prospective appraiser trainee must:]

{(1) complete 75 creditable classroom hours as set forth in the Trainee Core Curriculum of the AQB;}

{(2) pass the 15-hour National USPAP course and examination; and}

{(3) complete a Board approved Appraiser Trainee/Sponsor course.}

(1) [(b)] An [Once a person is licensed as an] appraiser trainee [by the Board, the person] may perform appraisals or appraiser services only under the active, personal and diligent direction and supervision of a supervisory [sponsoring] appraiser. [The trainee's authorization to perform appraisals or appraisal services terminates if:]

{(1) the appraiser trainee license expires due to nonpayment of the renewal fee or failure to satisfy the educational or experience requirements for renewal; or}

(2) An appraiser trainee may be supervised by more than one supervisory appraiser. [the appraiser trainee's authority to act has been suspended or revoked by the Board.]

(3) Supervisory appraisers may supervise no more than three appraiser trainees at one time.

(4) A supervisory appraiser may be added during the term of an appraiser trainee's license if:

(A) The supervisory appraiser and appraiser trainee have provided proof to the Board of completion of an approved Appraiser Trainee/Supervisory Appraiser course;

(B) an application to supervise has been received and approved by the Board; and

(C) the applicable fee has been paid.

(5) A licensed appraiser trainee who signs an appraisal report must include his or her license number and the word "Trainee" as part of the appraiser trainee's signature in the report.

(b) Eligibility requirements for appraiser trainee supervision.

(1) To be eligible to supervise an appraiser trainee, a certified appraiser must:

(A) be in good standing and not subject to any disciplinary action within the last three years that affected the certified appraiser's eligibility to engage in appraisal practice;

(B) complete an approved Appraiser Trainee/Supervisory Appraiser course; and

(C) submit proof of course completion to the Board.

(2) Before supervising an appraiser trainee, the supervisory appraiser must notify the appraiser trainee in writing of any disciplinary action taken against the supervisory appraiser within the last three years that did not affect the supervisory appraiser's eligibility to engage in appraisal practice.

(3) An application to supervise must be received and approved by the Board before supervision begins.

(c) Maintaining eligibility to supervise appraiser trainees. [The sponsoring appraiser shall immediately notify the Board and the trainee in writing of any termination of sponsorship of an appraiser trainee, on a form approved by the Board and shall pay a fee set by the Board not later than the 10th day after the date of such termination.]

(1) A supervisory appraiser who wishes to continue to supervise appraiser trainees upon renewal of his/her license must complete an approved Appraiser Trainee/Supervisory Appraiser course within four years before the expiration date of the supervisory appraiser's current license and provide proof of completion to the Board.

(2) If a supervisory appraiser has not provided proof of course completion at the time of renewal, but has met all other requirements for renewing the license the supervisory appraiser will no longer be eligible to supervise appraiser trainees; and the Board will take the following actions:

(A) the supervisory appraiser's license will be renewed on active status; and

(B) the license of any appraiser trainees supervised solely by that supervisory appraiser will be placed on inactive status.

(3) A certified appraiser may restore eligibility to supervise appraiser trainees by:

(A) completing the course required by this section; and

(B) submitting proof of course completion to the Board.

(4) The supervisory appraiser's supervision of previously supervised appraiser trainees may be reinstated by:

(A) submitting the required form to the Board; and

(B) payment of any applicable fees.

(d) Maintaining eligibility to act as an appraiser trainee. [If an appraiser trainee's license has expired or been revoked by the Board or the appraiser trainee is no longer under the sponsorship of a spon-

soring appraiser, the appraiser trainee may not perform the duties of an appraiser trainee until an application to sponsor the trainee has been filed together with payment of the appropriate fee and approved by the Board.]

(1) An appraiser trainee must complete an approved Appraiser Trainee/Supervisory Appraiser course within four years before the expiration date of the appraiser trainee's current license and provide proof of completion to the Board.

(2) If an appraiser trainee has not provided proof of course completion at the time of renewal, but has met all other requirements for renewing the license, the Board will renew the appraiser trainee's license on inactive status, and the appraiser trainee will no longer be eligible to perform appraisals or appraisal services.

(3) An appraiser trainee may return the appraiser trainee's license to active status by:

(A) completing the course required by this section;

(B) submitting proof of course completion to the Board;

(C) submitting an application to return to active status, including an application to add a supervisory appraiser; and

(D) paying any applicable fees.

(e) Duties of the supervisory appraiser. [Sponsoring appraisers are responsible to the public and to the Board for the conduct of the appraiser trainee under the Act. After notice and hearing, the Board may reprimand a sponsoring appraiser or may suspend or revoke a sponsoring appraiser's or supervisor's license based on conduct by the appraiser trainee constituting a violation of the Act or a rule of the Board.]

(1) Supervisory appraisers are responsible to the public and to the Board for the conduct of the appraiser trainee under the Act.

[(f) A sponsor may be added during the term of an appraiser trainee's license, by completing a form approved by the Board, paying a fee set by the Board, and completing a Board approved Appraiser Trainee/Sponsor course.]

(2) [(g)] The supervisory [sponsoring] appraiser assumes all the duties, responsibilities, and obligations of a supervisory appraiser [sponsor] as specified in these rules and must diligently supervise the appraiser trainee. Diligent supervision includes, but is not limited to, the following:

(A) [(1)] direct supervision and training as necessary;

(B) [(2)] ongoing training and supervision as necessary after the supervisory appraiser [sponsor] determines that the appraiser trainee no longer requires direct supervision;

(C) [(3)] communication with and accessibility to the appraiser trainee; and

(D) [(4)] review and quality control of the appraiser trainee's work.

[(h) A licensed appraiser trainee who signs an appraisal report must include his or her license number and the word "Trainee" as part of the appraiser trainee's signature in the appraisal report.]

[(i) Sponsoring appraisers may sponsor no more than three trainees at one time. Notification of sponsorship of an appraiser trainee must be provided in writing to the Board on a form approved by the Board with payment of the appropriate fee prior to the start of sponsorship.]

(3) [(j)] Supervisory appraisers [Sponsors] must approve and sign the appraiser trainee's appraisal log and experience affidavit at least quarterly and provide appraiser trainees with access to any appraisals and work files completed under the supervisory appraiser [sponsor].

(4) After notice and hearing, the Board may reprimand a supervisory appraiser or may suspend or revoke a supervisory appraiser's license based on conduct by the appraiser trainee constituting a violation of the Act or Board rules.

(g) Termination of supervision.

(1) Supervision may be terminated by the supervisory appraiser or the appraiser trainee.

(2) If supervision is terminated, the terminating party must:

(A) immediately notify the Board on a form approved by the Board; and

(B) notify the non-terminating party in writing no later than the 10th day after the date of termination; and

(C) pay any applicable fees no later than the 10th day after the date of termination.

(3) If an appraiser trainee is no longer under the supervision of a supervisory appraiser:

(A) the appraiser trainee may no longer perform the duties of an appraiser trainee; and

(B) is not eligible to perform those duties until:

(i) an application to supervise the trainee has been filed;

(ii) any applicable fees have been paid; and

(iii) the Board has approved the application.

[(k)] ~~Sponsors must be in good standing and not subject to any disciplinary action within the last three years that affected the sponsor's eligibility to engage in appraisal practice. Disciplinary action taken against a sponsor within the last three years that did not affect the sponsor's eligibility to engage in appraisal practice must be disclosed in writing to the appraiser trainee prior to sponsorship.~~

[(l)] ~~Beginning September 1, 2015, all sponsors and appraiser trainees must provide proof that they have completed a Board approved Appraiser Trainee/Sponsor course at the time they renew their license. The course must have been completed within four years of the expiration date of the current license.~~

(h) Course approval.

(1) [(m)] To obtain Board approval of an Appraiser Trainee/Supervisory Appraiser [Sponsor] course, a course provider must:

(A) submit form ATS-0, Appraiser Trainee/Supervisory Appraiser [Sponsor] Course Approval, adopted herein by reference;[5] and

(B) satisfy the Board that all required content set out in form ATS-0 is adequately covered.

(2) Approval of an Appraiser Trainee/Supervisory Appraiser [Sponsor] course shall expire two years from the date of Board approval.

(3) An [approved Board] Appraiser Trainee/Supervisory Appraiser [Sponsor] course may be delivered through:

(A) classroom delivery method; or

(B) distance education delivery method. The delivery mechanism for distance education courses offered by a non-academic provider must be approved by an AQB-approved organization providing approval of course design and delivery.

(i) ACE credit.

(1) [(n)] Supervisory appraisers [Sponsors] who complete the Appraiser Trainee/Supervisory Appraiser [Sponsor] course may receive ACE credit for the course.

(2) [(o)] Appraiser Trainees may not receive qualifying or ACE credit for completing the Appraiser Trainee/Supervisory Appraiser [Sponsor] course.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Kristen Worman

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Texas Appraiser Licensing and Certification Board

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For further information, please call: (512) 936-3652



CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §157.7, §157.8

The Texas Appraiser Licensing and Certification Board (TALCB or Board) proposes amendments to 22 TAC §157.7, Denial of a License, and §157.8, Adverse Action Against a License Holder or Registrant. The proposed amendments reorganize these sections for better understanding and clarity.

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

Ms. Worman also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections as proposed will be requirements that are consistent with the statutes and easier to understand, apply and process.

Comments on the proposal may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1103.151, which authorizes the TALCB to adopt rules relating

to certificates and licenses, and §1104.051, which authorizes TALCB to adopt rules necessary to administer Chapter 1104.

The statutes affected by these amendments are Texas Occupations Code, Chapters 1103 and 1104. No other statute, code or article is affected by the proposed amendments.

§157.7. Denial of a License; Adverse Action Against a License Holder.

(a) Denial of a License.

(1) If the Board denies a certification, license, trainee approval, or registration, the Board shall promptly give written notice of denial to the applicant. If the applicant is supervised [sponsored] by another license holder, the Board shall send a copy of the notice of denial to the supervisory appraiser [sponsor].

(2) The notice of denial shall include:

(A) a statement of the Board's action;

(B) a summary of the facts and laws on which the action is based;

(C) a statement of the right of the person to request a hearing; and

(D) the following language in capital letters in bold-face type: IF YOU FAIL TO REQUEST A HEARING IN WRITING WITHIN 30 DAYS, THIS DETERMINATION WILL BECOME FINAL.

(3) If a person fails to request a hearing in writing within 30 days of receiving the notice, the Board's determination will become final.

(b) Adverse Action Against a License Holder.

(1) If the Board proposes to take adverse action against a license holder, former license holder, or registrant, the Board shall promptly give written notice to the person against whom the action is proposed to be taken. If an appraiser trainee is the respondent, the Board shall send a copy of the notice to the supervisory appraiser.

(2) The notice of adverse action shall include:

(A) a summary of the facts and laws on which the proposed action is based;

(B) a statement of the action proposed by the Board, including the proposed sanction and/or the amount of any administrative penalties; and

(C) a statement of the right of the person to a hearing.

[(b) The notice shall include:]

[(1) a statement of the Board's action;]

[(2) a summary of the facts and laws on which the action is based;]

[(3) a statement of the right of the person to request a hearing; and]

[(4) the following language in capital letters in boldface type: IF YOU FAIL TO REQUEST A HEARING IN WRITING WITHIN 30 DAYS, THIS DETERMINATION WILL BECOME FINAL.]

(c) A license holder who has agreed in writing to suspension or revocation for failure to comply with the terms of a consent order, consent agreement, or agreed order in connection with an application or a previous disciplinary matter is deemed to have had notice and an opportunity for a hearing in a subsequent action resulting from failure

to comply with an administrative requirement of probation, such as payment of a fee or completion of coursework. [If a person fails to request a hearing in writing within 30 days of receiving the notice, the Board's determination will become final.]

§157.8. Order Modifications [Adverse Action Against a License Holder or Registrant].

[(a) If the Board proposes to take adverse action against a license holder, former license holder, or registrant, the Board shall promptly give written notice to the person against whom the action is proposed to be taken. If an appraiser trainee is the respondent, the Board shall send a copy of the notice to the sponsor.]

[(b) The notice shall include:]

[(1) a summary of the facts and laws on which the proposed action is based;]

[(2) a statement of the action proposed by the Board, including the proposed sanction and/or the amount of any administrative penalties; and]

[(3) a statement of the right of the person to a hearing.]

[(e) A license holder or registrant who has agreed in writing to suspension or revocation for failure to comply with the terms of a consent order, consent agreement, or agreed order in connection with an application or a previous disciplinary matter is deemed to have had notice and an opportunity for a hearing in a subsequent action resulting from failure to comply with an administrative requirement of probation, such as payment of a fee or completion of coursework.]

[(d)] The Board will consider a modification of an existing agreed or consent order at its next scheduled Board meeting if the license holder or registrant:

(1) is currently in compliance with the existing order; and

(2) submits a written request that sets out the specific modification requested and the reason for the modification to the Board's general counsel on or before the 14th day prior to a scheduled Board meeting. Submission of a request for modification of an agreed or consent order to the Board does not relieve the license holder or registrant of compliance obligations under the existing order.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER B. CONTESTED CASE HEARINGS

22 TAC §157.9, §157.12

The Texas Appraiser Licensing and Certification Board (TALCB or Board) proposes amendments to 22 TAC §§157.9, Notice of Hearing, and 157.12, Failure to Attend Hearing; Default Judgment. The proposed amendments align these sections with statutory changes adopted by the 84th Legislature.

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

Ms. Worman also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections as proposed will be requirements that are consistent with the statutes and easier to understand, apply and process.

Comments on the proposal may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1103.151, which authorizes the TALCB to adopt rules relating to certificates and licenses, and §1104.051, which authorizes TALCB to adopt rules necessary to administer Chapter 1104.

The statutes affected by these amendments are Texas Occupations Code, Chapters 1103 and 1104. No other statute, code or article is affected by the proposed amendments.

§157.9. *Notice of Hearing.*

(a) The notice of hearing must comply with Chapter 2001, Texas Government Code.

(b) [(a)] The notice of hearing shall be served not later than the 30th day before the hearing date.

(c) [(b)] Service of notice of hearing must be made in the manner prescribed by Chapter 2001, Texas Government Code, and the rules of the State Office of Administrative Hearings. Notice to a person who is a current license holder or applicant of the Board shall be complete and effective if sent by certified mail, return receipt requested, to the respondent or applicant at his or her most recent address as shown by the records of the Board. Service by mail shall be complete upon deposit of the document in question in a post paid properly addressed envelope in a post office of official depository under the care and custody of the United States Postal Service.

(d) [(e)] The notice shall include the following language in capital letters in boldface type: FAILURE TO APPEAR AT THE HEARING WILL RESULT IN THE ALLEGATIONS AGAINST YOU SET OUT IN THE COMPLAINT BEING ADMITTED AS TRUE AND A DEFAULT JUDGMENT BEING TAKEN AGAINST YOU.

§157.12. *Failure to Attend Hearing; Default [Judgment].*

(a) SOAH rules regarding Default Proceedings and Dismissal Proceedings [1 TAC §155.501 and §155.503 (relating to Default Proceedings and Dismissal Proceedings) (SOAH rules)] apply when [where] a respondent or applicant fails to appear [in person or through his legal representative] on the day and [at the] time set for hearing in a contested case. If a respondent or applicant fails to appear at a contested case hearing, [regardless of whether an appearancee has been entered and] the Board's staff may move [moves] either for dismissal of the case from SOAH's docket or for the issuance of a default proposal for decision by the administrative law judge. [In either case, the Board shall enter a default judgment in the matter adverse to the

respondent who has failed to attend the hearing, upon proper proof of notice to the defaulting party.]

(b) If the administrative law judge issues a default proposal for decision or an order dismissing the case from the SOAH docket, the factual allegations included in the notice sent to respondent or applicant are deemed admitted as true and, upon return of the case from SOAH, the Board shall enter a default order against the respondent or applicant. [For purposes of this section, a default judgment shall mean the issuance of a final order against the respondent in which the factual allegations against the respondent contained in the notice sent to respondent pursuant to §157.9 of this chapter (relating to Notice of Hearing) or the petition filed at SOAH shall be admitted as prima facie evidence and deemed admitted as true, without any requirement for additional proof to be submitted to the Board prior to the Board entering the final order]

(c) No additional proof is required to be submitted to the Board before the Board enters the final default order.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER C. POST HEARING

22 TAC §§157.17, 157.18, 157.20

The Texas Appraiser Licensing and Certification Board (TALCB or Board) proposes amendments to 22 TAC §§157.17, Final Decisions and Orders, 157.18, Motions for Rehearing; Finality of Decisions, and 157.20, Judicial Review. The proposed amendments align these sections with statutory changes to Chapter 1103, Texas Occupations Code, and Chapter 2001, Texas Government Code, adopted by the 84th Legislature. The proposed amendments also clarify the action to be taken by the Board when a motion for rehearing does not include specific grounds for rehearing.

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

Ms. Worman also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections as proposed will be requirements that are consistent with the statutes and easier to understand, apply and process.

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

emailed to general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules relating to certificates and licenses, and §1104.051, which authorizes TALCB to adopt rules necessary to administer Chapter 1104.

The statutes affected by these amendments are Texas Occupations Code, Chapters 1103 and 1104. No other statute, code or article is affected by the proposed amendments.

§157.17. Final Decisions and Orders.

(a) After a proposal for decision has been issued by an administrative law judge, the Board will render the final decision in the contested case or remand the proceeding for further consideration by the administrative law judge.

(b) The Board is responsible for imposing disciplinary action and/or assessing administrative penalties, if any, against a respondent who is found to have violated any of the Board's statutes or rules. The Board welcomes recommendations from an administrative law judge as to the sanctions to be imposed, but the Board is not required to give presumptively binding effect to the judge's recommendations and is not bound by such recommendations.

(c) If the Board remands the case to the administrative law judge, the Board may direct that further consideration be accomplished with or without reopening the hearing and may limit the issues to be considered. If, on remand, additional evidence is admitted that results in a substantial revision of the proposal for decision, or the underlying facts, an amended or supplemental proposal for decision shall be prepared by the administrative law judge and the provisions of this subchapter shall apply. Exceptions and replies shall be limited to items contained in the supplemental proposal for decision.

(d) The proposal for decision may be acted upon by the Board after the expiration of the applicable time periods for filing exceptions and replies to exceptions, and after the administrative law judge has ruled on any exceptions and replies.

(e) Any party may request oral arguments before the Board prior to the final disposition of the contested case. Oral arguments will be conducted in accordance with ~~[paragraphs (4) (5) of]~~ this subsection.

(1) The chairperson or the Board member designated by the chairperson to preside (the presiding member) shall announce the case. Upon the request of any party, the presiding member may conduct a prehearing conference with the parties and their attorneys of record. The presiding member may announce reasonable time limits for any oral arguments to be presented by the parties.

(2) The hearing on the proposal for decision shall be limited to the record. New evidence may not be presented on the substance of the case unless the party submitting the evidence can establish that the new evidence was not reasonably available at the time of the original hearing or the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the original hearing.

(3) In presenting oral arguments, the party bearing the burden of proof shall open and close. The party responding may offer rebuttal arguments. Parties may request an opportunity for additional rebuttal subject to the discretion of the presiding member.

(4) After being recognized by the presiding member, the members of the Board may ask questions of the parties. If a party is represented by counsel, the questions must be directed to the party's attorney. Questions must be limited to the record and to the arguments made by the parties.

(5) Upon the conclusion of oral arguments, questions by the members of the Board, and any discussion by the member of the Board, the presiding member shall call for a motion regarding disposition of the contested case. The presiding member may vote on the motion. A motion may be granted only if a majority of the members present and voting vote in favor of the motion. In the event of a tie vote, the presiding member shall announce that the motion is overruled.

(f) Final orders on contested cases shall be in writing and signed by the presiding officer of the Board. Final orders shall include findings of fact and conclusions of law separately stated from disciplinary actions imposed and administrative penalties assessed. Parties shall be notified as provided in Chapter 2001, Texas Government Code [either personally or by mail of any decision or order]. On written request, a copy of the decision or order shall be delivered or mailed to any party and to the respondent's attorney of record.

(g) The Board may change a finding of fact or conclusion of law in a proposal for decision when the Board determines:

(1) that the judge did not properly apply or interpret applicable law, agency rules, written policies provided by staff or prior administrative decisions;

(2) that a prior administrative decision on which the judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

(h) If the Board modifies, amends, or changes a finding of fact or conclusion of law in a proposal for decision, the order shall reflect the Board's changes as stated in the record of the meeting and state the specific reason and legal basis for the changes.

(i) If the Board does not follow the recommended disciplinary action and/or administrative penalty in a proposal for decision, the order shall explain why the Board chose not to follow the recommendation as stated in the record of the meeting.

(j) Imminent Peril. If the Board finds that an imminent peril to the public health, safety, or welfare requires immediate effect on a final decision or order in a contested case, it shall recite the factual and legal basis for its finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered, and no motion for rehearing is required as a prerequisite for appeal.

(k) Conflict of Interest. A Board member shall recuse himself or herself from all deliberations and votes regarding any matter:

(1) the Board member reviewed as a member of a Peer Investigative Committee;

(2) involving persons or transactions about which the Board member has a conflict of interest; ~~[or]~~

(3) involving persons or transactions related to the Board member sufficiently closely as to create the appearance of a conflict of interest; ~~or[-]~~

(4) in which the Board member participated in the negotiation of a consent order.

~~[(4) A Board member's participation in the negotiation of a consent order under Texas Occupations Code, §1103.458, does not require recusal under subsection (k) of this section.]~~

§157.18. Motions for Rehearing[; Finality of Decisions].

(a) Motions for rehearing in proceedings under Chapter 1103, Texas Occupations Code, are governed by §§2001.144 - 2001.147, Texas Government Code, and this section. ~~[Filing times. A motion~~

for rehearing must be filed within 20 days after a party has been notified, either in person or by certified mail, return receipt requested, of the final decision or order made by the Board.]

(b) Motions for rehearing in proceedings under Chapter 1104, Texas Occupations Code, are governed by §1104.216, Texas Occupations Code, §§2001.144 - 2001.147, Texas Government Code, and this section.

(c) A timely-filed motion for rehearing is a prerequisite to appeal, except as provided in §157.17 of this subchapter.

(d) Replies to a motion for rehearing may be filed as provided in Chapter 2001, Texas Government Code.

(e) [(b)] A motion for rehearing shall set forth the particular finding of fact, conclusion of law, ruling, or other action which the complaining party asserts caused substantial injustice to the party and was in error such as violation of a constitutional or statutory provision, lack of authority, unlawful procedure, lack of substantial evidence, abuse of discretion, other error of law, or other good cause specifically described in the motion. In the absence of specific grounds in the motion, the Board will take no action, and [shall presume that] the motion will [should] be overruled by operation of law.

[(e) Board action. Board action on a motion must be taken no later than the 20th day after the date the commissioner is served with the motion for rehearing. If Board action is not taken within the 20 day period, the motion for rehearing is overruled by operation of law.]

[(d) A decision is final, in the absence of a timely motion for rehearing, on the expiration of the period for filing a motion for rehearing. A decision is final and appealable on the date of rendition of the order overruling a motion for rehearing, or on the date the motion for rehearing is overruled by operation of law.]

(f) [(e)] Any party may request oral arguments before the Board prior to the final disposition of the motion for rehearing. If the Board grants a request for oral argument, oral [Oral] arguments will be conducted in accordance with [paragraphs (4) (5) of] this subsection.

(1) The chairperson or the Board member designated by the chairperson to preside (the presiding member) shall announce the case. Upon the request of any party, the presiding member may conduct a prehearing conference with the parties and their attorneys of record. The presiding member may announce reasonable time limits for any oral arguments to be presented by the parties.

(2) The hearing on the motion shall be limited to a consideration of the grounds set forth in the motion. Testimony by affidavit or documentary evidence such as excerpts of the record before the presiding officer may be offered in support of, or in opposition to, the motion; provided, however, a party offering affidavit testimony or documentary evidence must provide the other party with copies of the affidavits or documents at the time the motion is filed. New evidence may not be presented on the substance of the case unless the party submitting the evidence can establish that the new evidence was not reasonably available at the time of the original hearing or the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the original hearing.

(3) In presenting oral arguments, the party filing the motion will have the burden of proof and shall open and close. The party responding to the motion may offer rebuttal arguments. Parties may request an opportunity for additional rebuttal subject to the discretion of the presiding member.

(4) After being recognized by the presiding member, the members of the Board may ask questions of the parties. If a party is represented by counsel, the questions must be directed to the party's

attorney. Questions must be limited to the grounds asserted for the motion to be granted and to the arguments made by the parties.

(5) Upon the conclusion of oral arguments, questions by the members of the Board, and any discussion by the member of the Board, the presiding member shall call for a vote on the motion. A member of the Board need not make a separate motion or second a motion filed by a party. The presiding member may vote on the motion. A motion may be granted only if a majority of the members present and voting vote in favor of the motion. In the event of a tie vote, the presiding member shall announce that the motion is overruled.

(g) [(f)] A decision is final and appealable on the date rendered if:

(1) the Board finds that an imminent peril to the public health, safety or welfare requires immediate effect; and[;]

(2) the Board's [in which event the] decision or order recites this [shall recite the] finding and the fact that the decision is final and effective on the date rendered.

§157.20. Judicial Review.

(a) A person who has exhausted all administrative remedies [;] and who is aggrieved by a final decision in a contested case is entitled to judicial review.

(b) The petition for judicial review must [shall] be filed in a district court of Travis County, Texas, as provided in Chapter 2001, Texas Government Code [within 30 days after the decision or order of the Board is final and appealable].

(c) Pursuant to Texas Government Code, §2001.177, a party seeking judicial review of a final decision of the Texas Appraiser Licensing and Certification Board in a contested case shall pay all costs of preparing the original or certified copy of a record of the contested case proceedings.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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22 TAC §157.19

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

The Texas Appraiser Licensing and Certification Board (TALCB) proposes the repeal of 22 TAC §157.19, Prerequisite to Judicial Review. The proposed repeal results from statutory changes to Chapter 1103, Texas Occupations Code, and Chapter 2001, Texas Government Code, adopted by the 84th Legislature.

The Board proposes repealing this section and moving the language to section 157.18, Motions for Rehearing, in this chapter.

Kristen Worman, General Counsel, has determined that for the first five-year period the proposed repeal is in effect, there will be no fiscal implications for the state or for units of local government as a result of implementing the repeal. There is no anticipated impact on local or state employment as a result of implementing the repeal. There will be no impact to small businesses or micro-businesses as a result of implementing the repeal.

Ms. Worman has also determined that for the first five years the repeal is in effect the public benefit anticipated as a result of the repeal is greater clarity and consistency in TALCB's processes.

Comments on the proposed repeal may be submitted to Kristen Worman, General Counsel, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The repeal is proposed under the Texas Occupations Code, §1103.151, Rules Relating to Certificates and Licenses, and §1104.051, Rules.

The statutes affected by this proposed repeal are Texas Occupations Code, Chapters 1103 and 1104. No other statute, code, or article is affected by the proposed repeal.

§157.19. Prerequisite to Judicial Review.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER D. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

22 TAC §157.25, §157.26

The Texas Appraiser Licensing and Certification Board (TALCB or Board) proposes amendments to 22 TAC §§157.25, Temporary Suspension, and a new §157.26, Unlicensed Activity. The proposed amendments and new rule implement statutory changes to Chapter 2001, Texas Government Code, and Chapter 1103, Texas Occupations Code, adopted by the 84th Legislature.

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

Ms. Worman also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections as proposed will

be requirements that are consistent with the statutes and easier to understand, apply and process.

Comments on the proposal may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1103.151, which authorizes the TALCB to adopt rules relating to certificates and licenses, and §1104.051, which authorizes TALCB to adopt rules necessary to administer Chapter 1104.

The statutes affected by these amendments are Texas Occupations Code, Chapters 1103 and 1104. No other statute, code or article is affected by the proposed amendments.

§157.25. Temporary Suspension.

(a) The purpose of a temporary suspension proceeding is to determine whether the continued practice by a person licensed, certified or registered by the Board would constitute a continuing threat to the public welfare. It is ancillary to a disciplinary proceeding regarding alleged violations of the Act or Board rules and is not dispositive concerning any such violations.

(b) The three Board members of the Enforcement Committee appointed by the chair of the Board shall serve as the disciplinary panel ("Panel") under Texas Occupations Code, §1103.5511 and §1104.211. The chair of the Board shall also appoint a Board member to act as an alternate member of the Panel in the event a member of the Panel is recused or unable to attend a temporary suspension proceeding.

(c) Board staff must request a temporary suspension proceeding in writing by filing a motion for temporary suspension with the Board's general counsel.

(d) The Panel may make a determination regarding a temporary suspension without notice or hearing pursuant to Texas Occupations Code, §1103.5511(c)(1) or §1104.211(c)(1), or may, if appropriate in the judgment of the chair of the Panel, provide the license holder or registrant with three days' notice of a temporary suspension hearing.

(e) The requirement under Texas Occupations Code, §1103.5511(c)(1) or §1104.211(c)(1) that "institution of proceedings for a contested case hearing is initiated simultaneously with the temporary suspension" shall be satisfied if, on the same day the motion for temporary suspension is filed with the Board's general counsel, the licensed, certified or registered person that is the subject of the temporary suspension motion, and the State Office of Administrative Hearings, as applicable, is sent one of the following documents that alleges facts that precipitated the need for a temporary suspension:

- (1) Notice of Alleged Violation;
- (2) Original Statement of Charges; or
- (3) Amended Statement of Charges.

(f) The Panel shall post notice of the temporary suspension proceeding pursuant to §551.045 of the Texas Government Code and Texas Occupations Code, §1103.5511(e) or §1104.211(e) and hold the temporary suspension proceeding as soon as possible.

(g) The determination whether the continued practice by a person licensed, certified or registered by the Board would constitute a continuing threat to the public welfare shall be determined from information presented to the Panel. The Panel may receive information and testimony in oral or written form. Documentary evidence must be submitted to the Board's general counsel in electronic format at least 24 hours in advance of the time posted for the temporary suspension hear-

ing in all cases where the Panel will be meeting via teleconference. If a hearing is held following notice to a license holder or registrant, Board staff will have the burden of proof and shall open and close. The party responding to the motion for temporary suspension may offer rebuttal arguments. Parties may request an opportunity for additional rebuttal subject to the discretion of the chair of the Panel. The chair of the Panel may set reasonable time limits for any oral arguments and evidence to be presented by the parties. The Panel may question witnesses and attorneys at the members' discretion. Information and testimony that is clearly irrelevant, unreliable, or unduly inflammatory will not be considered.

(h) The determination of the Panel may be based not only on evidence admissible under the Texas Rules of Evidence, but may be based on information of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs.

(i) If the Panel suspends a license or certificate, it shall do so by order and the suspension shall remain in effect for the period of time stated in the order, not to exceed the date a final order is issued by the Board in the underlying contested case proceeding. The Panel order must recite the factual and legal basis for imminent peril warranting temporary suspension.

(j) A temporary suspension under Texas Occupations Code, §1103.5511 or §1104.211 shall not automatically expire after 45 days if the Board has scheduled a hearing on the contested case to take place within that time and the hearing is continued beyond the 45th day for any reason other than at the request of the Board.

(k) If credible and verifiable information that was not presented to the Panel at a temporary suspension hearing, which contradicts information that influenced the decision of the Panel to order a temporary suspension, is subsequently presented to the Panel with a motion for rehearing on the suspension, the chair of the Panel will schedule a rehearing on the matter. The chair of the Panel will determine, in the chair's sole discretion, whether the new information meets the standard set out in this subsection. A rehearing on a temporary suspension will be limited to presentation and rebuttal of the new information. The chair of the Panel may set reasonable time limits for any oral arguments and evidence to be presented by the parties. Panel members may question witnesses and attorneys. Information and testimony that is clearly irrelevant, unreliable, or unduly inflammatory will not be considered. Any temporary suspension previously ordered will remain in effect, unless the Panel holds a rehearing on the matter and issues a new order rescinding the temporary suspension.

§157.26. Unlicensed Activity.

If the Board receives information indicating that a person has violated Chapter 1103 or 1104, Texas Occupations Code, or Board rules, the Board shall conduct an investigation to determine if such information is accurate. If the investigation produces evidence to indicate a probable violation of Chapter 1103 or Chapter 1104, Texas Occupations Code, or Board rules, the Board may, after notice and an opportunity for a hearing:

- (1) impose an administrative penalty;
- (2) issue an order to cease and desist; or
- (3) take such other action as may be necessary and proper.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Kristen Worman
General Counsel
Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 936-3652

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SUBCHAPTER E. ALTERNATIVE DISPUTE RESOLUTION

22 TAC §157.31

The Texas Appraiser Licensing and Certification Board (TALCB or Board) proposes amendments to 22 TAC §157.31. Investigative Conference. The amendments propose changes to align the rule with statutory changes to Chapter 1103, Texas Occupations Code, adopted by the 84th Legislature.

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

Ms. Worman also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections as proposed will be a requirement that is consistent with the statute and easier to understand, apply and process.

Comments on the proposal may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1103.151, which authorizes the TALCB to adopt rules relating to certificates and licenses, and §1104.051, which authorizes TALCB to adopt rules to administer Chapter 1104.

The statutes affected by these amendments are Chapters 1103 and 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§157.31. Investigative Conference.

(a) A respondent may meet with the Board for an investigative discussion of the facts and circumstances of the alleged violations.

(b) A respondent may, but is not required to, have an attorney or other advocate present at an investigative conference.

(c) A respondent will be provided with [a list of topics that may be discussed and] a Statement of Investigative Conference Procedures and Rights (IC Form) not later than three [(3)] days before [prior to] the date of the investigative conference. The respondent and respondent's attorney, if any, must acknowledge receipt of the IC Form by signing it and delivering it to the Board at the beginning of the investigative conference.

(d) The Board will provide a copy of the investigative report to the respondent and respondent's representative(s), if any, not later than three days before the date of the investigative conference if respondent and respondent's representative(s), if any:

(1) Submit a written request for a copy of the investigative report not later than five days before the date of the investigative conference; and

(2) Sign the Board's confidentiality agreement prohibiting the re-release of the investigative report without written permission of the Board or a court order.

~~[(d) At its sole discretion, the Board may provide a copy of the investigative report to the respondent or respondent's attorney for the purpose of advancing ease settlement or resolution.]~~

(e) Participation in an investigative conference is not mandatory and may be terminated at any time by either party.

(f) At the conclusion of the investigative conference, the Board staff may propose a settlement offer that can include administrative penalties and any other disciplinary action authorized by the Act or recommend that the complaint be dismissed.

(g) The respondent may accept, reject, or make a counter offer to the proposed settlement not later than ten (10) days following the date of the investigative conference.

(h) If the parties cannot reach a settlement not later than ten (10) days following the date of the investigative conference, the matter will be referred to the Director of Standards and Enforcement Services to pursue appropriate action.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

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For further information, please call: (512) 936-3652



PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 531. CANONS OF PROFESSIONAL ETHICS AND CONDUCT

22 TAC §531.18, §531.20

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §531.18, Consumer Information and new §531.20, Information About Brokerage Services, in Chapter 531, Canons of Professional Ethics and Conduct.

The proposed amendments to Chapter 531 implement statutory changes in SB 699, adopted by the 84th legislature. The legislature authorized the Commission to adopt the form and delivery method for a consumer notice regarding complaints and recovery fund availability and for Information about Brokerage Services. The proposed new forms will be for mandatory use by license holders and will be have to be linked to the homepage of a license holder's webpage.

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local gov-

ernment as a result of enforcing or administering the sections. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be greater consumer protection.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§531.18. Consumer Information.

(a) The [Texas Real Estate] Commission adopts by reference Consumer Notice [Information] Form CN 1-2 [1-1]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

(b) Each [active real estate inspector or] active real estate broker [licensed by the Texas Real Estate Commission] shall provide the notice adopted under subsection (a) by: [display Consumer Information Form 1-1 in a prominent location in each place of business the broker or inspector maintains.]

(1) displaying it in a readily noticeable location in each place of business the broker or inspector maintains; and

(2) providing a link to it labeled "Texas Real Estate Commission Consumer Notice", in at least a 10 point font, in a readily noticeable place on the homepage of the business website of the broker or sponsored sales agents.

§531.20. Information About Brokerage Services.

(a) The Commission adopts by reference Information about Brokerage Services Form IABS (IABS Form) 1-0. The IABS Form is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

(b) Each active real estate broker or sales agent shall provide:

(1) a link to the IABS Form labeled "Texas Real Estate Commission Information About Brokerage Services", in at least a 10 point font, in a readily noticeable place on the homepage of the business website of the broker or sales agent; and

(2) the IABS Form as required under 1101.558, Texas Occupations Code.

(c) For purposes of §1101.558, Texas Occupations Code, the IABS Form can be provided:

(1) by personal delivery by the broker or sales agent;

(2) by first class mail or overnight common carrier delivery service;

(3) in the body of an email; or

(4) as an attachment to an email with a specific reference to the IABS Form in the body of the email.

(d) Providing a link to the IABS Form in a footnote or signature block in an email does not satisfy the requirements of subsection (c).

(e) License holders may reproduce the IABS Form published by the Commission, provided that the text of the IABS Form is copied verbatim and the spacing, borders and placement of text on the page must appear to be identical to that in the published version of the IABS Form, except that the Broker Contact Information section may be pre-filled.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Kerri Lewis

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3092



CHAPTER 533. PRACTICE AND PROCEDURE SUBCHAPTER A. DEFINITIONS

22 TAC §533.1

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §533.1 regarding Definitions in Chapter 533, Practice and Procedure.

The proposed amendments to Chapter 533, Subchapter A amends definitional terms to align them with statutory changes in SB 699 adopted by the 84th legislature.

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

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be greater clarity in the rules.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics

for its licensees to fulfill the purposes of chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§533.1. Definitions.

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

(1) ADR--Alternative dispute resolution.

~~[(2) Administrator--The Administrator of the Texas Real Estate Commission.]~~

(2) ~~[(3)]~~ ADR Procedures--Alternatives to judicial forums or administrative agency contested case proceedings for the voluntary settlement of contested matters through the facilitation of an impartial third-party.

(3) ~~[(4)]~~ APA--The Administrative Procedure Act (Texas Government Code, Chapter 2001).

(4) ~~[(5)]~~ Applicant--Any person seeking a license, certificate, registration, approval or permit from the Commission.

(5) ~~[(6)]~~ Commission--The Texas Real Estate Commission.

(6) ~~[(7)]~~ Complainant--Any person who has filed a complaint with the Commission against any person whose activities are subject to the jurisdiction of the Commission.

(7) ~~[(8)]~~ Contested case or proceeding--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the Commission and/or Administrator after an opportunity for adjudicative hearing.

(8) Executive Director--The Executive Director of the Texas Real Estate Commission.

(9) Mailing Address--The mailing address as provided to the Commission by a license holder and maintained as required by the Commission's rules or as provided to the Commission by an Applicant or as shown in the Commission's records for a Respondent who is not a license holder. The mailing address for a Respondent that holds an active sales agent [salesperson] license shall be the mailing address of the sales agent's [salesperson's] sponsoring broker as shown in the Commission's records.

(10) License--The whole or part of any registration, license, certificate, approval, permit, or similar form of permission required or permitted by law issued by the Commission.

(11) Party--A person admitted to participate in a case before the Commission or the Administrator.

(12) Person--Any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.

(13) Pleading--A written document submitted by a party, or a person seeking to participate in a case as a party, which requests procedural or substantive relief, makes claims, alleges facts, makes legal argument, or otherwise addresses matters involved in the case.

(14) Respondent--Any person, licensed or unlicensed, who has been charged with violating a law that establishes a regulatory program administered by the Commission or a rule or order issued by the Commission.

(15) Sanctions--Any administrative penalty, disciplinary or remedial action imposed by the Commission for violations of Texas

Occupations Code, Chapter 1101, 1102, or 1105 or the Rules adopted by the Commission pursuant to those chapters.

(16) SOAH--State Office of Administrative Hearings.

(17) TAC--Texas Administrative Code.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Kerri Lewis

General Counsel

Texas Real Estate Commission

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SUBCHAPTER B. GENERAL PROVISIONS RELATING TO PRACTICE AND PROCEDURE

22 TAC §§533.3, 533.7, 533.8, 533.10

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §533.3, Filing and Notice, §533.7, Final Decisions and Orders §533.8, Motions for Rehearing; Finality of Decisions and a new 22 TAC §533.10, Hearing: Subpoenas and Fees, in Chapter 533, Practice and Procedure.

The amendments are proposed to align the rules with statutory changes to Chapter 2001, Texas Government Code, adopted by the 84th Legislature, to delegate authority to hear motions for rehearing to the Commission's Enforcement Committee and to move the text of §535.171 to new §533.10 where the subject matter more appropriately belongs.

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

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will that it will conform to statutory changes and be easier to find, use and apply the rules on this subject matter.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§533.3. Filing and Notice.

(a) (No change.)

(b) If after investigation of a possible violation and the facts surrounding that possible violation the Commission determines that a violation has occurred, the Commission may issue a written Notice of Alleged Violation to the Respondent. The Commission shall provide notice in accordance with the APA. [~~The Notice must:~~]

~~{(1) be delivered by personal service, or be sent to the Respondent's mailing address by certified or registered mail; and}~~

~~{(2) include:}~~

~~{(A) a brief summary of each alleged violation;}~~

~~{(B) a statement of the sanctions recommended;}~~

~~{(C) a statement of the right of the Respondent to a hearing; and}~~

~~{(D) a notice that failure to answer will result in a default order against Respondent.}~~

~~{(e) The Notice may also be sent by email or other means, which may serve as evidence of actual notice.}~~

(c) [~~(d)~~] Not later than the 20th day after the date on which the Notice of Alleged Violation is sent, the Respondent may:

(1) accept the determination of the Commission, including sanctions recommended by the Commission; or

(2) make a written request for a hearing on that determination.

~~{(e) The Commission shall provide notice in accordance with the APA and Texas Occupations Code, Chapters 1101 and 1102.}~~

(d) [~~(f)~~] Upon receipt of a written request for hearing, the Commission shall submit a request to docket case to SOAH accompanied by copies of relevant documents giving rise to a contested case.

(e) [~~(g)~~] When the Commission submits a request to docket case with SOAH, SOAH acquires jurisdiction over a contested case until SOAH issues final amendments or corrections to the Proposal for Decision. In case of a conflict with the Commission's rules, SOAH's rules control while SOAH has jurisdiction.

(f) [~~(h)~~] Pleadings, other documents, and service to SOAH shall be filed in accordance with SOAH's rules.

(g) [~~(i)~~] If a real estate salesperson is a Respondent, the Commission will notify the salesperson's sponsoring broker of the hearing. If an apprentice inspector or real estate inspector is a Respondent, the Commission will notify the sponsoring professional inspector of the hearing. Notice under this subsection need not be provided by certified or registered mail.

(h) [~~(j)~~] Any document served upon a party is prima facie evidence of receipt, if it is directed to the party's mailing address or email address. This presumption is rebuttable. Failure to claim properly addressed certified or registered mail will not support a finding of non-delivery.

§533.7. Final Decisions and Orders.

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

(g) Final orders on contested cases shall be in writing and signed by the presiding officer of the Commission. Final orders shall

include findings of fact and conclusions of law separately stated from disciplinary actions imposed and administrative penalties assessed. Parties will be notified [either personally or by mail of any decision] and [will be] given a copy of the decision as provided by the APA. A decision is final as provided by the APA. [A party notified by mail of a final decision or order is presumed to have been notified on the third day after the date on which the notice is mailed.]

(h) If the Commission or the Executive Director [Administrator] finds [find] that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order, that finding shall be recited in the decision or order as well as the fact that the decision or order is final and effective on the date signed. The decision or order is then final and appealable on the date signed and a motion for rehearing is not required as a prerequisite for appeal.

(i) (No change.)

§533.8. *Motions for Rehearing [; Finality of Decisions].*

(a) The timely filing of a motion for rehearing is a prerequisite to appeal. [A decision is final, in the absence of a timely motion for rehearing, on the expiration of the period for filing a motion for rehearing. A decision is final and appealable on the date the order overrules a motion for rehearing, or on the date the motion for rehearing is overruled by operation of law.]

(b) Motions for rehearing are controlled by the APA [Texas Government Code], §§2001.145 - 2001.147 and this section.

(c) A motion for rehearing shall set forth the particular finding of fact, conclusion of law, ruling, or other action which the complaining party asserts caused substantial injustice to the party and was in error, such as violation of a constitutional or statutory provision, lack of authority, unlawful procedure, lack of substantial evidence, abuse of discretion, other error of law, or other good cause specifically described in the motion. In the absence of specific grounds in the motion, the Commission will take no action and [shall presume that] the motion will [should] be overruled by operation of law.

(d) The Commission delegates authority to hear and rule on motions for rehearing to the Commission's Enforcement Committee, consisting of three Commission members appointed by the Commission chair.

(e) [(d)] Any party may request oral arguments before the Enforcement Committee [Commission] prior to the final disposition of the motion for rehearing. If the Enforcement Committee grants a request for oral argument, oral [Oral] arguments will be conducted in accordance with paragraphs (1) - (5) of this subsection.

(1) The chair [chairperson] of the Enforcement Committee or the member designated by the chair [chairperson] to preside (the presiding member) shall announce the case. Upon the request of any party, the presiding member may conduct a prehearing conference with the parties and their attorneys of record. The presiding member may announce reasonable time limits for any oral arguments to be presented by the parties.

(2) The hearing on the motion shall be limited to a consideration of the grounds set forth in the motion. Testimony by affidavit or documentary evidence, such as excerpts of the record before the presiding officer, may be offered in support of, or in opposition to, the motion; provided, however, a party offering affidavit testimony or documentary evidence must provide the other party with copies of the affidavits or documents at the time the motion is filed. New evidence may not be presented on the substance of the case unless the party submitting the evidenced can establish that the new evidence was not reasonably available at the time of the original hearing, or the party offering the

evidence was misled by a party regarding the necessity for offering the evidence at the original hearing.

(3) In presenting oral arguments, the party filing the motion will have the burden of proof and persuasion and shall open and close. The party responding to the motion may offer rebuttal arguments. Parties may request an opportunity for additional rebuttal, subject to the discretion of the presiding member.

(4) After being recognized by the presiding member, the members of the Enforcement Committee [Commission] may ask questions of the parties. If a party is represented by counsel, the questions must be directed to the party's attorney. Questions must be limited to the grounds asserted for the motion to be granted and to the arguments made by the parties.

(5) Upon the conclusion of oral arguments, questions by the members of the Enforcement Committee [Commission], and any discussion by the members [member] of the Enforcement Committee [Commission], the presiding member shall call for a vote on the motion. A member of the Enforcement Committee [Commission] need not make a separate motion or second a motion filed by a party. The presiding member may vote on the motion. A motion may be granted only if a majority of the Enforcement Committee members are present and voting vote in favor of the motion. In the event of a tie vote, the presiding member shall announce that the motion is overruled.

(f) [(e)] A petition for judicial review must be filed in a District Court of Travis County Texas [within 30 days after the order is final and appealable,] as provided by the APA [Texas Government Code, Title 10, Subtitle A, Chapter 2001]. A party filing a petition for judicial review must also comply with the requirements of Texas Occupations Code, §1101.707.

(g) [(f)] A party who appeals a final decision in a contested case must pay all costs for the preparation of the original or a certified copy of the record of the agency proceeding that is required to be transmitted to the reviewing court.

(h) [(g)] If, after judicial review, the administrative penalty is reduced or not assessed, the Executive Director [Administrator] shall remit to the person charged the appropriate amount, plus accrued interest if the administrative penalty has been paid, or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the Executive Director [Administrator] under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and shall be paid for the period beginning on the date that the assessed administrative penalty is paid to the Commission and ending on the date the administrative penalty is remitted.

§533.10. *Hearing: Subpoenas and Fees.*

(a) In addition to APA §2001.089, process may be served by an employee of the Commission if that person is designated by the Commission.

(b) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to attend any hearing or proceeding to give a deposition or to produce books, records, papers, or other objects that may be necessary and proper for the purposes of the proceeding is entitled to receive mileage of \$.20 a mile for going to and returning from the place of the hearing or where the deposition is taken, if the place is more than 25 miles from the person's place of residence and a fee of \$20 a day for each day or part of a day the person is necessarily present as a witness or deponent.

(c) Pursuant to APA §2001.089, a party who requests the issuance of a subpoena for a witness or deponent under subsection (b) of this section, must deposit an amount with the Commission that will

reasonably ensure payment of the amounts estimated to accrue under subsection (b) of this section and APA §2001.103.

(d) Pursuant to APA §2001.177, a party seeking judicial review of a final decision of the Commission in a contested case shall pay all costs of preparing the original or certified copy of a record of the contested case proceedings.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Kerri Lewis

General Counsel

Texas Real Estate Commission

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CHAPTER 534. GENERAL ADMINISTRATION

22 TAC §534.2

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §534.2, Processing Fees for Dishonored Payments, in Chapter 534, General Administration.

The proposed amendments to Chapter 534 implement statutory renumbering changes in SB 699, adopted by the 84th legislature.

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

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be conformity with statutory changes.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§534.2. *Processing Fees for Dishonored Payments.*

(a) (No change.)

(b) Collection of the fee imposed under this section does not preclude the Commission from proceeding under Texas Occupations

Code, §1101.652(a)(3) [§1101.652(a)(4)], against a license holder who has failed to make good a payment issued to the Commission within a reasonable time.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Kerri Lewis

General Counsel

Texas Real Estate Commission

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CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER A. DEFINITIONS

22 TAC §535.1

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.1 in Chapter 535, General Provisions.

The proposed amendments to Chapter 535, Subchapter A clarify the definition of business entity and add a definition for trade association, Commission and Executive Director.

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

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be greater clarity in the rules.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102 and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.1. *Definitions.*

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

(1) Act--Texas Occupations Code, Chapter 1101.

(2) Business entity--A domestic or foreign corporation, limited liability, partnership or other entity authorized under the Texas Business Organizations Code to engage in the real estate brokerage business in Texas and required to be licensed under the Act.

(3) Chapter 1102--Texas Occupations Code, Chapter 1102.

(4) Commission--The Texas Real Estate Commission.

(5) [(4)] Compensation--A commission, fee or other valuable consideration for real estate brokerage services provided by a license holder under the Act.

(6) [(5)] Delivered--Sent by United States Mail to the last known mailing address or by email to the last known email address of a license holder or an applicant.

(7) Executive Director--The Executive Director of the Texas Real Estate Commission.

(8) [(6)] Foreign broker--A real estate broker licensed in another country, territory or state other than Texas.

(9) [(7)] License--Any Commission license, registration, certificate, approval, or similar form of permission required by law.

(10) [(8)] License holder--A person licensed or registered by the Commission under Chapter 1101 or 1102, Texas Occupations Code.

(11) [(9)] Place of business--A place where the license holder meets with clients and customers to transact business.

(12) Trade Association--a nonprofit voluntary member association or organization:

(A) whose membership consists primarily of persons who are licensed as real estate license holders and pay membership dues to the association or organization;

(B) that is governed by a board of directors elected by the members; and

(C) that subscribes to a written code of professional conduct or ethics.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Kerri Lewis

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3092



SUBCHAPTER B. GENERAL PROVISIONS RELATING TO THE REQUIREMENTS OF LICENSURE

22 TAC §535.21

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.21, Mailing Address and Other Contact Information, in Chapter 535, General Provisions.

The amendments to Chapter 535, Subchapter B are proposed to align the rule with statutory changes to Chapter 1101, Texas Occupations Code, adopted by the 84th Legislature in SB 699.

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

Ms. Lewis also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the sections will be increased clarity and a requirement that is consistent with the statute.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.21. *Mailing Address and Other Contact Information.*

(a) Each license holder shall provide a mailing address, phone number, and email address used for business [; if available,] to the Commission and shall report all subsequent changes not later than the 10th day after the date of a change of any of the listed contact information. If a license holder fails to update the contact information, the last known contact information provided to the Commission is the license holder's contact information.

(b) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER C. EXEMPTIONS TO REQUIREMENTS OF LICENSURE

22 TAC §535.32

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.32, Attorneys in Fact, in Chapter 535, General Provisions.

The amendments to Chapter 535, Subchapter C are proposed to align the rule with statutory changes to Chapter 1101, Texas Occupations Code, adopted by the 84th Legislature in SB 699, limiting a person conducting real estate transactions for another using a power of attorney to no more than three, unless that person is licensed under the Act.

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

Ms. Lewis also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section is greater consumer protection and a requirement that is consistent with the statute.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.32. Attorneys in Fact.

A person holding a valid power of attorney recorded in the county in which the particular real property is located and which specifically describes the real property may act as a real estate agent for the owner of such property without being licensed as a real estate broker or salesperson, provided the person does not use powers of attorney to engage in more than three [the] real estate transactions annually [brokerage business].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §§535.51, 535.53, 535.56, 535.57

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §§535.51, General Requirements for a Real Estate License; 535.53 Business Entity; Designated Broker; 535.56, Education and Experience Requirements for a Broker; and 535.57, Examinations, in Chapter 535, General Provisions.

The amendments to Chapter 535, Subchapter E are proposed to align the rules with statutory changes in SB 1307 and SB 699, adopted by the 84th Legislature, including implementing a time frame requirement for broker license education, requiring additional education after multiple failures of the licensing examination, and extending expedited license processing to active military service members and veterans and waiving certain license and application fees for an applicant who meets designated criteria. The amendments also decrease the waiting period after disciplinary action has been completed for good standing qualification and correct typographical errors.

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

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be requirements that are consistent with the statute and easier to understand, apply and process.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.51. General Requirements for a Real Estate License.

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

(c) License [Expedited license] for military service members, military veterans, or military spouses. This subsection applies to an applicant who is a military service member, a military veteran, or the spouse of a person serving on active duty as a member of the armed forces of the United States.

(1) The Commission shall waive the license application and examination fees for an applicant who is:

The Commission shall issue on an expedited basis a license to an applicant who holds a current certificate or license issued by a country,

territory, or state other than Texas for other than Texas that has licensing requirements that are substantially equivalent to the requirements for the certificate or license issued in Texas.

(A) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(B) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(2) [(4)] The Commission shall issue on an expedited basis a license to an applicant who holds a current certificate or license issued by a country, territory, or state other than Texas for other than Texas that has licensing requirements that are substantially equivalent to the requirements for the certificate or license issued in Texas.

(3) [(2)] The Commission may issue a license to an applicant who, within the five years preceding the application date, held the license in Texas [that expired while the applicant lived in a country, territory, or state other than Texas for at least six months].

(4) [(3)] The Commission may allow an applicant to demonstrate competency by alternative methods in order to meet the requirements for obtaining a particular license issued by the Commission. For purposes of this subsection, the standard method of demonstrating competency is the specific examination, education, and/or experience required to obtain a particular license.

(5) [(4)] In lieu of the standard method(s) of demonstrating competency for a particular license and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the Commission:

- (A) education;
- (B) continuing education;
- (C) examinations (written and/or practical);
- (D) letters of good standing;
- (E) letters of recommendation;
- (F) work experience; or
- (G) other methods required by the administrator.

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

(f) The Executive Director [administrator] may waive any prerequisite to obtaining a license for an applicant issued [issue a license] under subsection (c) or (d) [by endorsement in the same manner as the Texas Department of Licensing and Regulation to an applicant under this subsection].

(g) - (i) (No change.)

§535.53. *Business Entity; Designated Broker.*

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

(1) For the purposes of qualifying for, maintaining, or renewing a license, a business entity must designate an individual holding an active Texas real estate broker license in good standing with the Commission to act for it.

(2) An individual licensed broker is not in good standing with the Commission if:

(A) the broker's license is [was] revoked or suspended, including probated revocation or suspension[, in the past two years];

(B) a business entity licensed by the Commission while the broker was the designated broker for that business entity had its license revoked or suspended, including probated revocation or suspension, in the past two years;

(C) the broker has any unpaid or past due monetary obligations to the Commission, including administrative penalties and recovery fund payments; or

(D) a business entity licensed by the Commission has any unpaid or past due monetary obligations to the Commission, including administrative penalties and recovery fund payments, that were incurred while the broker was the designated broker for the entity;

(3) Regardless of the type of business entity, the designated broker must be a managing officer of the business entity.

(4) The business entity may not act as a broker during any period in which it does not have a designated broker to act for it who meets the requirements of the Act.

(5) To obtain or renew a license, or upon any change in the business entity's designated broker, the entity must provide to the Commission:

(A) proof of the designated broker's current status as an officer, manager or general partner for that entity; and

(B) proof that the business entity maintains appropriate errors and omissions insurance if the designated broker does not own directly at least 10 percent of the entity.

(6) A broker may not act as a designated broker at any time while the broker's license is inactive, expired, suspended, or revoked.

(c) (No change.)

§535.56. *Education and Experience Requirements for a Broker License.*

(a) Education requirements.

(1) An applicant for a broker license must provide the Commission with satisfactory evidence of completion of:

(A) 270 hours of qualifying real estate courses as required under §535.55, which must include the 30 hour qualifying real estate brokerage course completed not more than two years before the application date; and

(B) an additional 630 classroom hours in related qualifying courses in the subject areas defined under §535.64 or approved continuing education courses.

(2) An applicant who has earned a bachelor's degree or higher from an accredited college or university will be deemed to have satisfied the related qualifying education requirements for a broker license. A copy of the college transcript awarding the degree must be submitted as evidence of completion of the degree.

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

(e) Waiver of education and experience requirements. Notwithstanding §1101.451(f) of the Act and subsections (a) - (d) [(4)] of this section, the Commission may waive education and experience required for a real estate broker license if the applicant satisfies each of the following conditions.

(1) The applicant was licensed as a Texas real estate broker within two years prior to the filing of the application.

(2) The applicant has completed at least 15 hours of continuing education courses within the two-year period prior to the filing of an application for an active license, including all applicable current non-elective courses.

(3) The applicant has at least two years of active experience as a licensed real estate broker or salesperson during the four-year period preceding the date the application is filed.

(f) (No change.)

§535.57. *Examinations.*

(a) Administration of licensing examinations.

(1) An examination required for any license issued by the Commission will be conducted by the testing service with which the Commission has contracted for the administration of examinations.

(A) The testing service shall schedule and conduct the examinations in the manner required by the contract between the Commission and the testing service.

(B) The examination fee must be paid each time the examination is taken.

(2) The testing service administering the examinations is required to provide reasonable accommodations for any applicant with a verifiable disability. Applicants must contact the testing service to arrange an accommodation. The testing service shall determine the method of examination, whether oral or written, based on the particular circumstances of each case.

(3) To be authorized for admittance to an examination, the applicant must present to the testing service administering the examinations appropriate documentation required by the testing service under contract with the Commission. The testing service shall require official photo-bearing personal identification of individuals appearing for an examination and shall deny entrance to anyone who cannot provide adequate identification. The testing service may refuse to admit an applicant who arrives after the time the examination is scheduled to begin or whose conduct or demeanor would be disruptive to other persons taking examinations at the site. The testing service may confiscate examination materials, dismiss the applicant, and fail the applicant for violating or attempting to violate the confidentiality of the contents of an examination.

(4) An applicant is [are] permitted to use hand-held calculators. If a calculator has printout capability, the testing service must approve use of such calculator before the examination. No other electronic devices are permitted.

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

(e) An applicant who fails the examination three consecutive times may not apply for reexamination or submit a new license application unless the applicant submits evidence satisfactory to the Commission that the applicant has completed additional qualifying education as follows, after the date the applicant failed the examination for the third time:

(1) for an applicant who failed the national part of the examination, 30 hours;

(2) for an applicant who failed the state part of the examination, 30 hours; and

(3) for an applicant who failed both parts of the examination, 60 hours.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES AND INSTRUCTORS FOR QUALIFYING EDUCATION

22 TAC §§535.60 - 535.66

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.60, Definitions, §535.61, Approval of Providers of Qualifying Courses, §535.62, Approval of Qualifying Courses, §535.63, Approval of Instructors of Qualifying Courses, §535.64, Content Requirements for Qualifying Real Estate Courses, §535.65, Responsibilities and Operations of Providers of Qualifying Courses and §535.66, Credit for Courses Offered by Accredited Colleges or Universities, in Chapter 535, General Provisions.

The amendments to Chapter 535, Subchapter F are proposed to align the rules with statutory changes to Chapter 1101, Texas Occupations Code, adopted by the 84th Legislature in SB 699, and to clarify and improve performance and delivery standards for real estate and inspector education providers, courses and instructors recommend by the Commission's Education Standards Advisory Committee.

Significant changes are as follows:

Correspondence and Alternative delivery methods are now included in one category defined as "distance education delivery." This follows the norm in the education industry and provides a consistent approach to course review, delivery and examinations for all distance education. Because of the increased standards for review by the Commission and to keep requirements for all distance education courses the same, the requirement that correspondence courses be offered in association with an accredited college or university has been removed and a separate distance learning center certification is no longer required for online courses.

The exam passage rate benchmark is revised and provides a formula for satisfactory, probation or unsatisfactory performance levels by providers. A student will now be affiliated with the provider with which the student took the majority of course hours.

A provider may now apply for a course approval with multiple delivery methods and pay only one content and examination review fee.

Providers must satisfy the Commission at the time of course applications that the course design meets all course hour requirements, that certain minimum methods to assess a student's comprehension of the course material are included, and that final examination question banks meet the specified standards.

The adult education instructor training course required beginning January 1, 2016 must now be dated within four years of the date of application, instead of five years.

The instructor qualification requirements for non-elective continuing education courses were moved to Subchapter G, Requirements for Continuing Education Providers, Courses and Instructors.

Combined 60 hour real estate qualifying courses will no longer be accepted for approval.

A Qualifying Real Estate Course Approval Form, for Real Estate Brokerage is proposed, setting out specific topics and timeframes.

Rules regarding provider or course advertising were clarified and strengthened for better consumer protection.

The provision regarding the estimated earliest timeframe that the Commission might approve a course application was removed as it was only a notice and no longer relevant.

An approved instructor is required to be available to timely answer students' questions and for providing answers and rationale for the grading of the written course work.

Daily course hours were increased from 10 to 12 and a course completion certificate may not be issued to the student until at least twice the number of hours for which course credit is given has elapsed since the student registered for the course.

Final course examinations for all delivery methods must be proctored.

An approved provider must obtain the approval of the Commission at least 30 days in advance of any material change in the operation of the provider.

Clarification that the curriculum accreditation standards that colleges or universities courses must meet if they want their students to get license credit by the Commission are verification of clock/course hours, design and delivery method. If these standards are not met, the Commission will still give license credit for these courses if the college or universities follow the standards and procedures for course approval required under this subchapter for all other providers.

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

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be higher standards for and consistency in license education resulting in better educated license holders and therefore greater consumer protection.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics

for its licensees to fulfill the purposes of chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.60. *Definitions.*

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

~~[(1) Alternative delivery--A method of course delivery other than classroom delivery where the course has been certified by a distance learning certification center acceptable to the Commission.]~~

(1) [(2)] Applicant--A person seeking approval to be an education provider or instructor of qualifying courses.

(2) [(3)] Classroom delivery--A method of course delivery where the instructor and students interact face to face and in real time, in either the same physical location, or through the use of technology.

(3) Distance Education delivery--A method of course delivery other than classroom delivery, including alternative delivery and correspondence delivery.

~~[(4) Correspondence delivery--A method of course delivery other than classroom delivery where the course has not been certified by a distance learning certification center acceptable to the Commission.]~~

(4) [(5)] Instructor--A person approved by the Commission to teach qualifying courses.

(5) [(6)] Mandatory qualifying course--A qualifying course that an applicant is required to take to fulfill licensing requirements as mandated by §1101.358 of the Act.

(6) [(7)] Other qualifying course--A qualifying course, other than a mandatory qualifying course, for which the subject matter of the course is specified by the Act or Commission rule, that an applicant is required to take to fulfill licensing requirements.

(7) [(8)] Person--Any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.

(8) [(9)] Provider--Any person approved by the Commission; or specifically exempt by the Act, Chapter 1102, or Commission rule; that offers a course for which qualifying credit may be granted by the Commission to a license holder or applicant.

(9) Scenario-based learning--The use of scenarios to support active learning strategies such as problem-based or case-based learning where students must apply their subject knowledge, critical thinking and problem solving skills in a real-world context.

(10) Topic--Subject categories of what must be covered in a specific course as defined by the Act, Chapter 1102 and this chapter.

(11) Unit--A subtopic within a topic.

§535.61. *Approval of Providers of Qualifying Courses.*

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

(c) Standards for approval. To be approved as a provider by the Commission, the applicant must meet the following standards:

(1) the applicant must satisfy the Commission as to the applicant's ability to administer courses with competency, honesty, trustworthiness and integrity. If the applicant proposes to employ another

person to manage the operation of the applicant, that person must meet this standard as if that person were the applicant;

(2) the applicant must demonstrate that the applicant has sufficient financial resources to conduct its proposed operations on a continuing basis without risk of loss to students taking courses from the approved provider; and

(3) that any proposed facilities will be adequate and safe for conducting courses;

(d) Financial review. An applicant shall provide the following information to enable the Commission to determine if an applicant has sufficient financial resources to conduct its proposed operations:

(1) business financial statements prepared in accordance with generally accepted accounting principles, which shall include a current income statement and balance sheet ~~[of financial condition and a current statement of net worth];~~

(2) a proposed budget for the first year of operation; and

(3) a market survey indicating the anticipated enrollment for the first year of operation.

(e) - (g) (No change.)

(h) Payment of an annual operation fee.

(1) An approved provider shall submit the Commission approved form and pay an annual operation fee prescribed by §535.101 of this title no later than each anniversary of the date of the provider's approval.

(2) An approved provider who fails to pay the annual operation fee as prescribed shall be placed on inactive status and notified in writing by the Commission.

(3) The approved provider will remain on inactive status until the annual fee is paid.

(4) The Commission will not give credit for courses given by a provider on inactive status.

(i) (No change.)

(j) Subsequent Approval ~~[Renewal]~~.

(1) Not earlier than 90 days before the expiration of its current approval, an approved provider may apply for subsequent approval ~~[renewal]~~ for another four year period.

(2) Approval or disapproval of a subsequent ~~[renewal]~~ application shall be subject to:

(A) the standards for initial applications for approval set out in this section; and

(B) whether the approved provider has met or exceeded the exam passage rate benchmark established by the Commission under subsection (k).

(3) The Commission will not require a financial review for subsequent approval ~~[renewal]~~ if the applicant has provided a statutory bond or other security acceptable to the Commission under §1101.302 of the Act, and there are no unsatisfied final money judgments against the applicant.

(k) Exam passage rates and benchmark.

(1) The exam passage rate for an approved provider shall be: ~~[For purposes of this subsection, a student is affiliated with the approved provider where the student took his or her last qualifying course. The Commission will not count the student in calculating the approved provider's exam pass rate if the student's last qualifying course was~~

~~taken more than two years before the date the approved provider or student submitted the course to the Commission.]~~

(A) calculated for each license category for which the provider offers courses; and

(B) displayed on the Commission website by license category.

(2) The Commission will calculate the exam passage rate of an approved provider ~~[providers for each category of license will be calculated]~~ on a monthly ~~[quarterly]~~ basis by:

(A) determining ~~[dividing]~~ the number of students affiliated with that approved provider~~],~~ who passed the examination on their first attempt in the two ~~[four]-~~year period ending on the last day of the previous month; and [quarter];

(B) dividing that number by the total number of students affiliated with that provider ~~[the approved provider's graduates] who took the exam for the first time during that same period.~~

(3) A student is affiliated with a provider under this subsection if the student took the majority of his or her hours of qualifying education with the provider in the two year period prior to taking the exam for the first time.

(4) ~~[(3)]~~For purposes of approving a subsequent application under subsection (j), ~~[If an approved provider offers courses to multiple license categories, the exam results for that approved provider will be calculated by license category. The passage rate for each license category that will be used to determine whether the approved provider has met or exceeded] the established exam passage rate benchmark for each [the] license category is 80% of the average percentage of the total examinees for that license category who passed the examination on the first attempt in the two year period ending on the last day of the previous month. [most current rate published by the Commission as of the date the Commission receives the timely application for renewal or, if the approval expired before being renewed, the most recent rate published by the Commission as of the expiration date of that provider's approval.]~~

(5) ~~[(4)]~~ If at the time the Commission receives a subsequent application for a provider, the provider's exam passage rate does not ~~[Providers who do not] meet the established benchmark for a license category the provider will be:~~ ~~[may be denied renewal]~~

(A) disapproved for that license category if the provider's exam passage rate is less than 50% of the average percentage of the total examinees for that license category who passed the examination on the first attempt in the two year period ending on the last day of the previous month; or

(B) placed on probation by the Commission if the provider's exam passage rate is 50% or greater of the average percentage of the total examinees for that license category who passed the examination on the first attempt in the two year period ending on the last day of the previous month ~~[under terms acceptable to the Commission].~~

(6) The exam passage rate of a provider on probation will be reviewed annually at the time the annual operating fee is due to determine if the provider can be removed from probation, remain on probation or have its license revoked, based on the criteria set out in paragraph (5) of this subsection.

~~[(5)]~~ In determining whether an approved provider qualifies for renewal for a particular license category based on its examination passage rate, the Commission may consider a variety of factors, including:

~~[(A) the overall passage rate for sales, broker, and inspector applicants; and]~~

~~[(B) any trends within the approved provider's passage rate over the four-year approval period.]~~

~~[(6) The Commission will publish the exam passage rate of providers by category of license on the Commission's website on a quarterly basis.]~~

§535.62. *Approval of Qualifying Courses.*

(a) Application for approval of a qualifying course.

(1) For each qualifying course a provider intends to offer, the provider must:

(A) submit the ~~[applicable] course application and course approval forms, [form(s)] including all materials required; and~~

~~[(B) submit all materials listed on the applicable course approval form(s); and]~~

(B) ~~[(C)]~~ pay the fee required by §535.101 or §535.210 of this title.

(2) A provider may file a single application for a qualifying course offered through multiple delivery methods. A fee is required for content and examination review of each qualifying course and for each distinct delivery method utilized by a provider for that course.

(3) A provider who seeks approval of a new delivery method for a currently approved qualifying course must submit a new application and pay all required fees, including a fee for content and examination review.

(4) ~~[(2)]~~ The Commission may:

(A) request additional information be provided to the Commission relating to an application; ~~[and]~~

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request; ~~and~~

(C) prior to approval of a proposed qualifying real estate inspector course, submit the course to the Texas Real Estate Inspector Committee for review and recommendation.

(b) Standards for course approval.

~~[(1)]~~ To be approved as a qualifying course by the Commission, a provider must satisfy the Commission that the course ~~[must]:~~

(1) ~~[(A)]~~ covers ~~[cover]~~ all topic and unit areas for the specific course subject required by the Act, Chapter 1102 and this chapter;

(2) ~~[(B)]~~ devotes ~~[devote]~~ the time prescribed for each topic required by a course approval form adopted by the Commission;

(3) ~~[(C)]~~ will be scheduled for the full clock hours of time for which credit is awarded and presented in full hourly units;

(4) ~~[(D)]~~ does not have daily course segments that exceed 12 hours ~~[meet the requirements of §535.65 of this subchapter];~~

(5) ~~[(E)]~~ will be delivered by one of the following delivery methods:

(A) ~~[(i)]~~ classroom delivery [method];

(B) ~~[(ii)]~~ distance education [alternative] delivery [method]; and

(C) ~~[(iii)]~~ a combination of (i) and (ii), if~~[:]~~

~~[(1)]~~ at least 50% of the combined course is offered by classroom delivery [method]; and

~~[(2)]~~ include at a minimum, the following methods to assess a student's comprehension of the course material:

(A) topic quizzes, with at least three questions related to the subject matter of each course topic;

(B) at least one scenario-based learning exercise per every increment of 10 credit hours or less; and

(C) if the course is delivered by distance education delivery:

~~[(i)]~~ Prevent the student from moving to the next topic until the student answers all topic quiz questions correctly and receives a passing grade on the scenario based learning exercises; and

~~[(ii)]~~ for quiz questions answered incorrectly, employ a method to present the rationale behind the correct answer and ask a subsequent related quiz question that will count toward passing the topic if answered correctly; and

(7) will have multiple versions of a final exam that:

(A) covers each topic required by the Act or Rules for the specific course;

(B) does not contain any true/false questions;

(C) for all qualifying courses other than a real estate math course:

~~[(i)]~~ consists of at least two questions per credit course hour; and

~~[(ii)]~~ draws from a question bank consisting of at least six questions per credit course hour; and

(D) for all qualifying real estate math courses, consists of at least 20 questions that are drawn from a question bank consisting of at least 60 questions.

~~[(H)]~~ the portion of the combined course offered through alternative delivery is taken from a full course that has already been certified for alternative delivery by a distance learning certification center acceptable to the Commission;]

~~[(iv)]~~ a correspondence course that is offered by a provider in association with an accredited college or university if the course is offered in accordance with the college or university's accreditation association's curriculum accreditation standards; or]

~~[(v)]~~ a combination of (i) and (iv), if~~[:]~~

~~[(1)]~~ at least 50% of the combined course is offered by classroom method; and]

~~[(H)]~~ the combined course is offered by a provider in association with an accredited college or university in accordance with the college or university's accreditation association's curriculum accreditation standards;]

~~[(2)]~~ Using the name of the provider "in association with" the name of the college or university on the course completion certificate constitutes certification to the Commission that the course was offered in compliance with the college or university's accreditation association's curriculum accreditation standards;]

~~[(3)]~~ The Commission may submit a proposed qualifying real estate inspector course to the Texas Real Estate Inspector Committee for review and recommendation prior to approval of the course;]

(c) If the course is currently certified by a distance learning certification center acceptable to the Commission, the provider will be deemed to have met requirements for verification of clock/course hours and design for distance education delivery.

(d) ~~[(e)]~~ Approval of currently approved courses by a subsequent provider.

(1) If a subsequent provider wants to offer a course currently approved for another provider, the subsequent provider must:

(A) submit the ~~[applicable]~~ course application and approval forms including all materials required; [form(s);]

(B) submit written authorization to the Commission from the author or provider for whom the course was initially approved granting permission for the subsequent provider to offer the course; and

(C) pay the fee required by §535.101 or §535.210 of this title.

(2) If approved to offer the previously approved course, the subsequent provider is required to:

(A) offer the course as originally approved, including expiration date, with any approved revisions, using all materials required for the course; and

(B) meet the requirements of §535.65 of this subchapter.

(e) ~~[(d)]~~ Required revision of a currently approved qualifying course.

(1) Providers are responsible for keeping current on changes to the Act and Commission Rules and must supplement materials for approved courses to present the current version of all applicable statutes and rules on or before the effective date of those statutes or rules.

(2) If the Commission adopts new requirements for a course, including but not limited to a course approval form that divides selected qualifying course subjects into topics and units, any provider currently offering a course on that subject must:

(A) revise and supplement any currently approved classroom qualifying course covering that subject no later than 12 months after the effective date of the new requirements;

(B) revise and supplement any currently approved qualifying course offered by distance education [alternative] delivery [covering that subject and obtain recertification of the course by a distance learning certification center acceptable to the Commission] no later than 15 months after the effective date of the new requirements;

(3) For each revised qualifying course, a provider must:

(A) submit the ~~[applicable]~~ course application and approval forms including all materials required; and [form(s);]

~~[(B) submit all revised materials; and if applicable, re-certification; and]~~

(B) ~~[(C)]~~ pay the fee required by §535.101 or §535.210 of this title.

(4) A provider may not offer a currently approved course for qualifying credit after the deadlines established by this subsection following a required revision of a qualifying course.

(5) If a provider paid a fee for the initial course approval, the provider will receive a prorated credit on the fee paid under this subsection for the unexpired time remaining on that initial approval.

The Commission will calculate the prorated credit by dividing the fee paid for the initial approval by 48 months and multiplying that amount by the number of full months remaining between the approval date of the revised course and the expiration date of the currently approved version of the course.

(6) A revised course approved under this subsection expires four years from the date of approval of the revision.

(7) No later than 90 days before the effective date of a revised course, a provider shall send written notice to all students who have purchased the currently approved course and not completed it, that credit will no longer be given for the current course as of the effective date of the revised course.

(8) If an approved provider fails to give the notice set out in paragraph (6) of this subsection, the provider shall allow the student to take the revised course at no additional charge.

(f) ~~[(e)]~~ Voluntary revision of a currently approved qualifying course.

(1) A provider who voluntarily revises a currently approved course, shall, prior to implementation of any course materials:

(A) file any updated course materials and revisions of the course outline with the Commission; and

(B) pay the fee required by §535.101 and §535.210 of this title.

(2) If after review the Commission is not satisfied with the updated course materials and revised course outline, the Commission may direct a provider to:

(A) further revise the materials;

(B) cease use of materials; or

(C) withdraw a course text.

(3) If a provider paid a fee for the initial course approval, the provider will receive a prorated credit on the fee paid under this subsection for the unexpired time remaining on that initial approval. The Commission will calculate the prorated credit by dividing the fee paid for the initial approval by 48 months and multiplying that amount by the number of full months remaining between the approval date of the revised course and the expiration date of the currently approved version of the course.

(4) A revised course approved under this subsection expires four years from the date of approval of the revision.

(5) No later than 90 days before the effective date of a revised course, a provider shall send written notice to all students who have purchased the currently approved course and not completed it, that credit will no longer be given for the current course as of the effective date of the revised course.

(6) If an approved provider fails to give the notice set out in paragraph (5) of this subsection, the provider shall allow the student to take the revised course at no additional charge.

(g) ~~[(f)]~~ Expiration of approval.

(1) Courses approved after January 1, 2011 are valid for four years from the date of approval.

(2) Courses approved before January 1, 2011 expire on December 31, 2015.

(3) Courses approved for use by a subsequent provider under subsection (d) ~~[(e)]~~ expire on the same date that the originally approved course expires.

(4) Currently approved versions of a course expire 90 days after approval of a revised version of that course.

~~(h)~~ ~~[(g)]~~ Renewal of course approval. Not earlier than 90 days before the expiration of a course approval, a provider may obtain a renewal of course approval for another four year period by following the process and meeting the current standards for an initial course approval.

~~(h)~~ Timeframe for course approval. The Commission will approve a course as soon as reasonably practicable after a provider meets all the requirements set out in this section. For the purposes of this section, "reasonably practicable" means no sooner than the 30th day after the Commission receives all required documentation for approval as set out in this section.]

(i) (No change.)

§535.63. *Approval of Instructors of Qualifying [and Non-Elective CE] Courses.*

(a) (No change.)

(b) Standards for instructor approval. To be approved as an instructor by the Commission to teach real estate or real estate inspection qualifying courses, the applicant must meet the following standards:

(1) The applicant must satisfy the Commission as to:

(A) the applicant's honesty, trustworthiness, and integrity; and

(B) the person's competency in the subject matter to be taught and ability to teach effectively.

(2) Except as provided by paragraph (3) of this subsection, the applicant must possess the following qualifications:

(A) a college degree in the subject area or five years of active ~~[professional]~~ experience as a license holder ~~[in the subject area]~~ and three years of experience in teaching or training; ~~or [and]~~

~~[(B) beginning January 1, 2016, a completion certificate from an adult education instructor training course of at least 8 hours that is acceptable to the Commission and dated within 5 years of the date of the application; or]~~

~~(B) [(C)] the equivalent of paragraph [paragraphs] (2)(A) [and (B)] of this subsection as determined by the Commission after consideration of the applicant's professional experience, research, authorship, or other significant endeavors in real estate or real estate inspection; and [the subject area.]~~

~~(C) beginning January 1, 2016, provide a completion certificate from an adult education instructor training course of at least 8 hours that is acceptable to the Commission and dated within four years of the date of application.~~

(3) To be approved as an instructor of Texas Standards of Practice, Texas Standards of Practice/Legal/Ethics Update, or as an instructor of a ride along inspection course as defined in §535.218 of this title, an applicant must have five years of active licensure as a Texas professional inspector, and have:

(A) performed a minimum of 200 real estate inspections as a Texas professional inspector; or

(B) three years of experience in teaching and/or sponsoring trainees or inspectors.

(c) Approval notice. An applicant shall not act as or represent that the applicant is ~~[itself to be]~~ an approved instructor until the applicant has received written notice of the approval from the Commission to teach specified courses.

~~[(d) Certification required to teach real estate non-elective CE courses.]~~

~~[(1) An applicant may not teach a real estate non-elective CE course until the applicant has:]~~

~~[(A) been approved as an instructor of qualifying courses; and]~~

~~[(B) received written certification from the Commission to teach a specific non-elective continuing education course.]~~

~~[(2) To obtain certification to teach a real estate non-elective continuing education course, the applicant must:]~~

~~[(A) be currently approved by the Commission as an instructor for qualifying courses in the subject areas of Principles of Real Estate, Law of Agency and Law of Contracts to teach Legal or Ethics Update; or]~~

~~[(B) be currently approved by the Commission as an instructor of qualifying courses in the subject areas of Principles of Real Estate, Law of Agency, Law of Contracts and Real Estate Brokerage to teach Broker Responsibility; and]~~

~~[(C) successfully complete an instructor training program approved by the Commission for the non-elective continuing education course for which certification is sought.]~~

~~[(3) A previously certified instructor must be recertified to teach a non-elective course whenever the previous course has expired and a new course has been approved.]~~

~~[(4) An instructor's certification to teach a legal or ethics update course expires on December 31 of every odd-numbered year.]~~

~~[(5) An instructor's certification to teach the broker responsibility course expires on December 31 of every even-numbered year.]~~

~~(d) [(e)] Period of [initial] approval. The [initial] approval of an [a] instructor is valid for two years.~~

~~(e) [(f)] Disapproval of an application.~~

(1) If the Commission determines that an applicant does not meet the standards for approval, the Commission shall disapprove the application and provide written notice of the disapproval to the applicant.

(2) The disapproval notice, applicant's request for a hearing on the disapproval, and any hearing are governed by the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 533 of this title (relating to Practice and Procedure). Venue for any hearing conducted under this section shall be in Travis County.

~~(f) [(g)] Subsequent approval [Renewal].~~

(1) Not earlier than 90 days before the expiration of its current approval, an approved instructor may apply for subsequent approval ~~[renewal]~~ for another two year period.

(2) Approval or disapproval of a subsequent approval ~~[renewal]~~ shall be subject to the standards for initial applications set out in this ~~[the]~~ section.

§535.64. *Content Requirements for Qualifying Real Estate Courses.*

(a) Mandatory qualifying courses. To be approved by the Commission, the following mandatory qualifying courses must contain the content outlined below:

(1) Principles of Real Estate I, which shall contain the following topics, the units of which are outlined in the PRINS 1-0, Qualifying Real Estate Course Approval Form, Principles of Real Estate I, hereby adopted by reference:

- (A) Introduction to Modern Real Estate Practice - 200 minutes;
- (B) Real Property - 60 minutes;
- (C) Concepts and Responsibilities of Home Ownership - 95 minutes;
- (D) Real Estate Brokerage and the Law of Agency - 180 minutes;
- (E) Fair Housing Laws - 150 minutes;
- (F) Ethics of Practice as a License Holder - 30 minutes;
- (G) Texas Real Estate License Act - 180 minutes;
- (H) Legal Descriptions - 100 minutes;
- (I) Real Estate Contracts - 135 minutes;
- (J) Interests in Real Estate - 180 minutes;
- (K) How Home Ownership is Held - 70 minutes; and
- (L) Listing Agreements - 120 minutes.

(2) Principles of Real Estate II, which shall contain the following topics, the units of which are outlined in the PRINS 2-0, Qualifying Real Estate Course Approval Form, Principles of Real Estate II, hereby adopted by reference:

- (A) Real Estate Math - 200 minutes;
- (B) Real Estate Appraisal - 200 minutes;
- (C) Real Estate Financing Principles - 210 minutes;
- (D) Control of Land Use - 115 minutes;
- (E) Specializations - 50 minutes;
- (F) Real Estate Investments - 110 minutes;
- (G) Leases - 95 minutes;
- (H) Property Management - 120 minutes;
- (I) Estates, Transfers, and Titles - 200 minutes; and
- (J) Closing Procedures/Closing the Real Estate Transaction - 200 minutes.

~~[(3) A combined 60 hour course approved by the Commission, consisting of both Principles of Real Estate I and II, which includes the topics for each course as outlined by this section.]~~

(3) [(4)] Law of Agency, which shall contain the following topics, the units of which are outlined in the LOA-0, Qualifying Real Estate Course Approval Form, Law of, hereby adopted by reference:

- (A) Agency Concepts - 130 minutes;
- (B) Basic Agency Relationships, Disclosure & Duties to Client - 125 minutes;
- (C) Duties and Disclosures to Third Parties - 125 minutes;
- (D) Seller Agency - 120 minutes;
- (E) Buyer Agency - 150 minutes;
- (F) Representing More than one Party in a Transaction: Intermediary Brokerage - 165 minutes;
- (G) Creation and Termination of Agency - 85 minutes;
- (H) Clarifying Agency Relationships - 45 minutes;
- (I) Employment Issues - 120 minutes;

- (J) Agency, Ethics and the Law - 155 minutes;
- (K) Deceptive Trade Practices & Consumer Protection Act - 140 minutes; and
- (L) Implementation and Presentation - 140 minutes.

(4) [(5)] Law of Contracts, which shall contain the following topics, the units of which are outlined in the LOC-0, Qualifying Real Estate Course Approval Form, Law of Contracts, hereby adopted by reference:

- (A) Texas Contract Law - 155 minutes;
- (B) Basics of Real Estate Law - 115 minutes;
- (C) Introduction to Contracts - 75 minutes;
- (D) Ownership Rights and Limitations - 120 minutes;
- (E) Contracts Used in Real Estate - 275 minutes;
- (F) The Sales Contract - 135 minutes;
- (G) Contingencies, Addenda and Amendments - 105 minutes;
- (H) Financing Real Estate - 235 minutes;
- (I) Conveyance of Title - 90 minutes;
- (J) Transaction Process and Closing - 135 minutes; and
- (K) Common Contract Mistakes - 60 minutes.

(5) [(6)] Promulgated Contract Forms, which shall contain the following topics, the units of which are outlined in the PCF-0, Qualifying Real Estate Course Approval Form, Promulgated Contract Forms, hereby adopted by reference:

- (A) Contract Law Overview - 155 minutes;
- (B) Laws, Rules and Regulations - 150 minutes;
- (C) Parties, Properties and Financing - 155 minutes;
- (D) Covenants, Commitments and Notices - 160 minutes;
- (E) Closing, Possession and More - 220 minutes;
- (F) The Remaining Promulgated Forms - 205 minutes;
- (G) Promulgated Addenda, Notices and Other Forms - 205 minutes;
- (H) Other Real Estate Matters - 115 minutes; and
- (I) Practice Makes Perfect - 135 minutes.

~~[(7) A combined 60 hour course approved by the Commission, consisting of both Law of Contracts and Promulgated Contract Forms, which includes the topics for each course as outlined by this section.]~~

(6) [(8)] Real Estate Finance, which shall contain the following topics, the units of which are outlined in the REF-0, Qualifying Real Estate Course Approval Form, Real Estate Finance, hereby adopted by reference:

- (A) The Nature & Cycle of Real Estate Finance - 105 minutes;
- (B) Money & the Monetary System - 100 minutes;
- (C) Additional Government Influence - 200 minutes;
- (D) The Secondary Mortgage Market - 95 minutes;
- (E) Sources of Funds - 110 minutes;

- (F) Instruments of Real Estate Finance - 170 minutes;
- (G) Loan Types, Terms & Issues - 200 minutes;
- (H) Government Loans - 215 minutes;
- (I) Lender Loan Processes - 220 minutes;
- (J) Defaults & Foreclosures - 85 minutes.

(7) Real Estate Brokerage (mandatory for a broker's license) which shall contain the following topics, the units of which are outlined in the REB-0, Qualifying Real Estate Course Approval Form, Real Estate Brokerage, hereby adopted by reference:

- (A) The Real Estate Industry - 30 minutes;
- (B) Starting a Brokerage Business - 110 minutes;
- (C) Ethical & Legal Business Practices - 300 minutes
- (D) Analyzing the Market & the Competition - 110 minutes
- (E) Managing Risk - 110 minutes;
- (F) Financing Your Business - 110 minutes;
- (G) Negotiating a Commercial Lease - 100 minutes;
- (H) The Marketing Plan - 150 minutes;
- (I) Management Style & Structure - 100 minutes;
- (J) Recruiting & Hiring - 100 minutes;
- (K) Professional Brokerage Competency & Associate License Holder Productivity - 180 minutes;
- (L) Evaluating the Business - 50 minutes;
- (M) Growth Opportunities - 50 minutes.

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License Holder Productivity - 180 minutes;

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

§535.65. *Responsibilities and Operations of Providers of Qualifying Courses.*

(a) Responsibility of Providers.

(1) A provider is responsible for:

(A) the administration of each course, including, but not limited to, compliance with any prescribed period of time for any required course topics required by the Act, Chapter 1102, and Commission rules;

- (B) maintaining student attendance records;
- (C) verifying instructor qualification, performance and attendance;
- (D) proper examination administration;
- (E) validation of student identity acceptable to the Commission;
- (F) maintaining student course completion records;
- (G) ensuring all advertising complies with subsection

(c);

(H) ensuring that instructors or other persons do not recruit or solicit prospective salespersons, brokers or inspectors during course presentation; and

(I) ensuring staff is reasonably available for public inquiry and assistance.[:]

~~[(J) ensuring that its classroom facilities are adequate for class size and pose no threat to the health or safety of students;]~~

~~[(K) ensuring that each student is present for the course for the hours of time for which credit is awarded.]~~

(2) A provider may not promote the sale of goods or services during the presentation of a course.

(3) A provider may remove a student and not award credit if a student does not participate in class, or disrupts the orderly conduct of a class, after being warned by the provider or the instructor.

(4) If a provider approved by the Commission does not maintain a fixed office in Texas for the duration of the provider's approval to offer courses, the provider shall designate a resident of this state as attorney-in-fact to accept service of process and act as custodian of any records in Texas that the provider is required to maintain by this section. A power-of-attorney designating the resident must be filed with the Commission in a form acceptable to the Commission.

(b) Use of approved Instructor.

(1) Except as provided by this subsection, a provider must use an instructor that is currently approved by the Commission to teach the specified course;

(2) Each instructor shall be selected on the basis of expertise in the subject area of instruction and ability as an instructor;

(3) A provider shall require specialized training or work experience for instructors teaching specialized subjects such as law, appraisal, investments, taxation or home inspection;

(4) An instructor shall teach a course in substantially the same manner represented to the Commission in the instructor's manual or other documents filed with the application for course approval form; and

(5) A provider may use the services of a guest instructor who is not approved as an instructor by the Commission for qualifying real estate or inspector courses provided that person instructs for no more than 10% of the total course time.

(c) Advertising.

(1) The following practices are prohibited:

(A) using any advertising which does not clearly and conspicuously contain the provider's name on the first page or screen of the advertising;

(B) representing that the provider's program is the only vehicle by which a person may satisfy educational requirements;

(C) conveying a false impression of the provider's size, superiority, importance, location, equipment or facilities, except that a provider may use objective information published by the Commission regarding pass rates;

(D) promoting the provider directly or indirectly as a job placement agency, unless the provider is participating in a program recognized by federal, state, or local government and is providing job placement services to the extent the services are required by the program; [øf]

(E) making any statement which is misleading, likely to deceive the public, or which in any manner tends to create a misleading impression;[:]

(F) advertising a course under a course name other than the course name approved by the Commission; or

(G) advertising using a name that implies the course or course provider is the Texas Real Estate Commission, including use of

the acronym "TREC", in all or part of the course or course provider's name.

(2) Any written advertisement by a provider that includes a fee that the provider charges for a course must display all fees that the provider charges for the course in the same place in the advertisement and with the same degree of prominence.

(3) The provider shall advertise a course for the full clock hours of time for which credit is awarded.

(4) The provider is responsible for and subject to sanctions for any violation of this subsection by any affiliate or other third party marketer or web hosting site associated with or used by the provider.

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

(f) Course materials.

(1) Before the course starts, a provider shall give each student copies of or provide online access to any materials to be used for the course.

(2) A provider shall update course materials to ensure that current and accurate information is provided to students as provided for under §535.62 of this subchapter.

(g) Presentation of courses.

(1) Classroom Delivery:

(A) The location for the course must be:

(i) [offered in a location] conducive to instruction, such as a classroom, training room, conference room, or assembly hall that is separate and apart from work areas;

(ii) adequate for the class size;

(iii) pose no threat to the health or safety of students;
and

(iv) allow the instructor to see and hear each student and the students to see and hear the instructor, including when offered through the use of technology.

(B) The provider must:

(i) check the photo identification of each student at class sign up and when signing in for each subsequent meeting of the class;

(ii) ensure the student is present for the course for the hours of time for which credit is awarded;

(iii) provide a 10 minute break per hour at least every two hours; and

(iv) not have daily course segments that exceed 12 hours.

~~[(B) The course must be scheduled for the full clock hours of time for which credit is awarded;]~~

(C) Makeup Session for Classroom Courses.

(i) A provider may permit a student who attends at least two-thirds of an originally scheduled qualifying course to complete a makeup session to satisfy attendance requirements.

(ii) A member of the provider's staff must approve the makeup procedure to be followed. Acceptable makeup procedures are:

(I) attendance in corresponding class sessions in a subsequent offering of the same course; or

(II) the supervised presentation by audio or video recording of the class sessions actually missed.

(iii) A student shall complete all class makeup sessions no later than the 90th day after the date of the completion of the original course.

(iv) Dropped status may not be changed by makeup sessions, and any hours accumulated by a student may not be transferred to any other course, prior to being dropped from a course.

(v) A student who attends less than two-thirds of the originally scheduled qualifying course is not eligible to complete a makeup session. The student shall automatically be dropped from the course with no credit and the provider shall report the student's status to the Commission.

~~[(C) Course presentation per day cannot exceed 10 hours;]~~

~~[(D) A 10 minute break per hour must be given at least every two hours.]~~

(2) Distance Education [Alternative] Delivery [and Correspondence:]

~~[(A)]~~ the provider must ensure that:

(A) the student taking all topics of the course and completing all quizzes and exercises is the student receiving credit for the course through a validation process that meets guidelines approved by the Commission;

(B) [(+)] an approved instructor [that a qualified person] is available to answer students' questions or provide assistance as necessary in a timely manner; [and]

(C) [(+)] [that] a student has completed all instructional modules and attended any hours of live instruction required for a given course; [and]

(D) [(B)] an approved instructor is [or the provider's coordinator or director must be] responsible for providing answers and rationale for the grading of the written course work; and

(E) a course completion certificate is not issued to the student until at least twice the number of hours for which course credit is given has elapsed since the student registered for the course.

(3) A provider is not required to present topics and units in the order outlined for a course on the corresponding course approval form.

(4) The periods of time prescribed to each unit of a topic for a qualifying course as outlined on the corresponding course approval form are recommendations and may be altered to allow instructors flexibility to meet the particular needs of their students.

~~[(h) Makeup Session.]~~

~~[(1) A provider may permit a student who attends at least two-thirds of an originally scheduled qualifying course to complete a makeup session to satisfy attendance requirements.]~~

~~[(2) A member of the provider's staff must approve the makeup procedure to be followed. Acceptable makeup procedures are:]~~

~~[(A) attendance in corresponding class sessions in a subsequent offering of the same course; or]~~

~~[(B) the supervised presentation by audio or video recording of the class sessions actually missed.]~~

~~{(3) A student shall complete all class makeup sessions no later than the 90th day after the date of the completion of the original course.}~~

~~{(4) Dropped status may not be changed by makeup sessions, and any hours accumulated by a student may not be transferred to any other course, prior to being dropped from a course.}~~

~~{(5) A student who attends less than two-thirds of the originally scheduled qualifying course is not eligible to complete a makeup session. The student shall be automatically dropped from the course with no credit and the provider shall report the student's status to the Commission.}~~

~~(h) [(+)] Course examinations.~~

~~(1) The final examination given at the end of each course must be given in a form and with questions [the examination] that were [was] submitted to the Commission with the course approval form.~~

~~{(2) Each topic required by the Act or Rules for a qualifying course must be covered in the final examination for that course.}~~

~~{(3) Unless otherwise provided for in this section, a provider shall use final course examinations consisting of at least 60 questions with an unweighted passing score of 70%.}~~

~~{(4) Real estate math qualifying course examinations may consist of a minimum of 20 questions with an unweighted passing score of 70%.}~~

~~(2) [(5)] Final examination questions must be kept confidential and be significantly different from any quizzes and exercises [questions] used [for diagnostic assessment of units] in the course.~~

~~(3) [(6)] A provider shall not permit a student to view or take a final examination before the completion of regular course work and any makeup sessions required by this section.~~

~~(4) [(7)] Examinations must [be:]~~

~~(A) comply with the requirements of §535.62(b)(7);~~

~~(B) require an unweighted passing score of 70%; and~~

~~(C) [(A)] be proctored by a member of the provider faculty or staff, or third party proctor acceptable to the Commission, who is present at the test site or able to observe the student through the use of technology, and has positively identified that the student [students] taking the examination is [are] the student [students] registered for and who took the course.[: or]~~

~~[(B) administered using a computer under conditions that satisfy the Commission that the student taking the examination is the student who took the course.}~~

~~{(8) A provider shall revise final course examinations for all active qualifying courses at least annually.}~~

~~(5) The following are acceptable third party proctors:~~

~~(A) employees at official testing or learning/tutoring centers;~~

~~(B) certified librarians at a school, university, or public library;~~

~~(C) college or university administrators, instructors, or academic advisors;~~

~~(D) clergy who can be identified with a specific temple, synagogue, mosque, or church; and~~

~~(E) educational officers of a corporation, military installation, or correctional facility.~~

~~(6) [(9)] A provider may not give credit to a student who fails a final examination and makeup final examination.~~

~~(i) [(+)] Makeup final course examination.~~

~~(1) If a student fails a final course examination, a provider may permit the student to retake the final examination only once and only after the student has:~~

~~(A) waited at least three [seven] calendar days; and~~

~~(B) completed any additional course work prescribed by the provider.~~

~~(2) A student shall complete a makeup final examination no later than the 90th day after the date the original class concludes and the second examination must be significantly different from the first examination.~~

~~(3) If a student fails to timely complete the makeup final examination as required by this subsection, the student shall be automatically dropped from the course with no credit.~~

~~(4) A student who fails the final course examination a second time is required to retake the course prior to retaking the final course examination.~~

~~(j) Course completion certificate.~~

~~(1) Upon successful completion of a core course, a provider shall issue a course completion certificate that a student can submit to the Commission. The course completion certificate shall show:~~

~~(A) the provider's name and approval number;~~

~~(B) the instructor's name and instructor license [approval] number assigned by the Commission;~~

~~(C) the course title;~~

~~(D) course numbers; including any Commission pre-approval number received];~~

~~(E) the number of classroom credit hours;~~

~~(F) the dates the student registered for, began and completed the course; and~~

~~(G) printed name and signature of an official of the provider on record with the Commission.~~

~~(2) A provider may withhold any official completion documentation required by this subsection from a student until the student has fulfilled all financial obligations to the provider.~~

~~(3) A provider shall maintain adequate security against forgery for official completion documentation required by this subsection.~~

~~(k) Instructor and course evaluations.~~

~~(1) A provider shall provide each student enrolled in a course with an instructor and course evaluation form and provide a link to an online version of the form that a student can complete and submit any time after course completion.~~

~~(2) An instructor may not be present when a student is completing the evaluation form and may not be involved in any manner with the evaluation process.~~

~~(3) When [At a minimum, when] evaluating an instructor or course, a provider shall use the [an] evaluation form approved by the Commission. A provider may also add additional questions to the~~

end of the Commission evaluation form or request the students to also complete the provider's evaluation form.

(4) A provider shall maintain any comments made by the provider's management relevant to instructor or course evaluations with the provider's records.

(5) At the Commission's request, a provider shall produce instructor and course evaluation forms for inspection by Commission staff.

(l) (No change.)

(m) Changes in Ownership or Operation of an approved provider of qualifying courses.

(1) An approved provider shall obtain the approval of the Commission at least 30 days in advance of any material change in the operation of the provider, including but not limited to changes in:

(A) ownership;

(B) management; and

(C) the location of main office and any other locations where courses are offered.

(2) An approved provider, upon transfer to the new owner, must meet the financial review standards imposed by §535.61 of this subchapter.

(3) An approved provider requesting approval of a change in ownership shall provide all of the following information or documents to the Commission:

(A) a new bond of \$20,000 for the proposed new owner, a statement from the bonding company indicating that the former bond will transfer to the proposed new owner, or other security acceptable to the Commission under §1101.302 of the Act;

(B) an Education Provider Application reflecting all required information for each proposed new owner; ~~and~~

(C) a Principal Information Form for each proposed new owner who would hold at least a 10% interest in the school; ~~and~~[-]

(D) pay the fee required by §535.101 or §535.210 of this title.

§535.66. *Credit for Courses Offered by Accredited Colleges or Universities.*

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

(c) Credit for real estate courses offered by an accredited college or university. To be eligible to receive credit by the Commission, qualifying courses offered by an accredited college or university must meet the following requirements:

(1) cover the subject and topics set out in §1101.003 of Tex. Occ. Code as clarified by the Commission in §535.64; and

(2) comply with the curriculum accreditation standards required of the college or university by the applicable accreditation association for verification of clock/course hours, design and delivery method.

(d) Credit for real estate inspector courses offered by an accredited college or university. To be eligible to receive credit by the Commission, qualifying courses offered by an accredited college or university meet the following requirements:

(1) meet the subject and topic definitions set out in §1102.001(5) of Tex. Occ. Code as clarified by the Commission in §535.213; and

(2) comply with the curriculum accreditation standards required of the college or university by the applicable accreditation association for verification of clock/course hours, design and delivery method.

(3) any courses offered to fulfill the substitute experience requirements allowed under §1102.111 must meet the requirements set out in §535.212 of this title, including instructor qualifications.

(e) (No change.)

(f) Required approval of qualifying courses not offered under subsections (c) or (d) or that are not subject to academic accreditation standards.

(1) To be eligible for credit from the Commission, a qualifying course offered by an accredited college and university ~~[on its own or in association with a third party provider approved by the Commission]~~ that is not offered under subsections (c) or (d) or that is not subject to academic accreditation standards is required to be submitted for approval by the Commission in accordance with §535.62 of this subchapter, including payment of any fee required.

(2) An accredited college or university may not represent that a course qualifies for credit by the Commission unless the accredited college or university receives written confirmation from the Commission that the course has been approved.

(g) - (h) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3092



SUBCHAPTER G. REQUIREMENTS FOR CONTINUING EDUCATION PROVIDERS, COURSES AND INSTRUCTORS

22 TAC §§535.70 - 535.75

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.70, Definitions, §535.71, Approval of CE Providers, §535.72, Approval of Non-elective Continuing Education Courses, §535.73, Approval of Elective Continuing Education Courses, §535.74, Approval of continuing Education Instructors for Elective Courses, and §535.75, Responsibilities and Operations of Continuing Education Providers in Chapter 535, General Provisions.

The amendments to Chapter 535, Subchapter G are proposed to align the rules with statutory changes to Chapter 1101, Texas Occupations Code, adopted by the 84th Legislature in SB 699, and to clarify and improve performance and delivery standards for real estate and inspector education providers, courses and instructors recommended by the Commission's Education Standards Advisory Committee.

Significant changes are as follows:

Correspondence and Alternative delivery methods are now included in one category defined as "distance education delivery." This follows the norm in the education industry and provides a consistent approach to course review, delivery and examinations for all distance education. Because of the increased standards for review by the Commission and to keep requirements for all distance education courses the same, the requirement that correspondence courses be offered in association with an accredited college or university has been removed and a separate distance learning center certification is no longer required for online courses.

A provider may now apply for a course approval with multiple delivery methods and pay only one content and examination review fee.

Non-elective real estate legal update courses were increased from 6 hours to 8 hours and renamed. Starting in January 2017, final examinations for non-elective courses will be required for instructors of the courses and courses taken by distance education delivery with specific passing score requirements. The final examination will be given by the instructor as part of the instruction for classroom delivery courses.

Non-elective real estate courses designed for distance delivery must demonstrate a method to engage distance education delivery students in interactive discussions and group activities, as well as additional material to meet the course objectives and time requirements before approval by the Commission.

The instructor qualification requirements for non-elective continuing education courses were moved from Subchapter F to this subchapter.

A course completion certificate may not be issued to the student until at least the number of hours for which course credit is given has elapsed since the student registered for the course instead of the 24 hour period in the current rule.

Final course examinations for distance delivery must contain at least four questions per course credit hour.

An approved provider must obtain the approval of the Commission at least 30 days in advance of any material change in the operation of the provider.

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

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be better educated license holders and therefore greater consumer protection.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission

to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.70. Definitions.

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

~~[(1) Alternative delivery--A method of course delivery other than classroom delivery where the course has been certified by a distance learning certification center acceptable to the Commission.]~~

~~(1) [(2)] Applicant--A person seeking accreditation or approval to be a continuing education provider or instructor.~~

~~(2) [(3)] CE Instructor--A person approved by the Commission to teach continuing education courses.~~

~~(3) [(4)] CE Provider--Any person approved by the Commission; or specifically exempt by the Act, Chapter 1102, Texas Occupation Code, or Commission rule; that offers a course for which continuing education credit may be granted by the Commission to a license holder or applicant.~~

~~(4) [(5)] Classroom delivery--A method of course delivery where the instructor and students interact face to face and in real time, in either the same physical location, or through the use of technology.~~

~~(5) [(6)] Distance Education [Correspondence] delivery--A method of course delivery other than classroom delivery, including alternative delivery and correspondence delivery. [where the course has not been certified by a distance learning certification center acceptable to the Commission.]~~

~~(6) [(7)] Elective CE course--A continuing education course, other than a Non-elective CE course, approved by the Commission as acceptable to fulfil the continuing education hours needed to renew a license.~~

~~(7) [(8)] Non-elective CE course--A continuing education course, for which the subject matter of the course is specifically mandated by the Act, Chapter 1102, or Commission rule, that a license holder is required to take prior to renewal of a license.~~

~~(8) [(9)] Person--Any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.~~

§535.71. Approval of CE Providers.

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

~~(g) Subsequent approval [Renewal].~~

~~(1) Not earlier than 90 days before the expiration of its current approval, an approved provider may apply for subsequent approval [renewal] for another two year period.~~

~~(2) Approval or disapproval of a subsequent [renewal] application shall be subject to the standards for initial applications for approval set out in this section.~~

§535.72. Approval of Non-elective Continuing Education Courses.

~~(a) (No change.)~~

~~(b) Application for approval to offer non-elective real estate CE courses.~~

(1) A CE provider seeking to offer a specific non-elective real estate CE course as outlined in this section shall:

(A) submit a ~~[Non-Elective]~~ CE Course Application Supplement to the Commission; and

(B) pay the fee required by §535.101 of this title.

(2) A provider may file a single ~~[separate]~~ application for a CE course offered through multiple ~~[is required for each course]~~ delivery methods. A fee is required for content review of each CE course and for each distinct delivery method utilized by a provider for that course. ~~[method.]~~

(3) A provider who seeks approval of a new delivery method for a currently approved CE course must submit a new application, and pay all required fees, including a fee for content review.

(4) ~~[(3)]~~ The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(c) Real estate non-elective CE courses. Every two years, the Commission shall approve subject matter and course materials to be used for the following non-elective real estate continuing education courses as required by the Act:

(1) a four ~~[three]~~ hour Legal Update I: Laws, Rules and Forms ~~[legal update]~~ course;

(2) a four ~~[three]~~ hour Legal Update II: Agency, Ethics and Hot Topics ~~[ethics]~~ course; and

(3) a six hour broker responsibility course.

(d) Course expiration.

(1) Each legal update ~~[and ethics]~~ course expires on December 31 of each odd-numbered year.

(2) Each broker responsibility course expires on December 31 of each even-numbered year.

(3) A CE provider must use a CE instructor who has received certification to teach the version of the real estate non-elective CE course being offered.

(e) Application for approval to offer non-elective inspector CE courses.

(1) A CE provider seeking to offer a specific non-elective inspector CE course as outlined in this section shall:

(A) submit:

(i) ICE Course Application form and the Texas Standards of Practice/Legal/Ethics Update Course approval form (PIEAC-SP_LEU-1); or

(ii) Qualifying Real Estate (or Inspector) Qualifying Course Application form and the Texas Standards of Practice/Legal/Ethics Update course approval form (PIEAC-SP_LEU-1); and

(B) pay the fee required by §535.210 of this title.

(2) A separate application is required for each course delivery method.

(f) (No change.)

(g) Delivery method.

~~[(4)]~~ Non-elective CE courses must ~~[meet the requirements of §535.75 of this subchapter and]~~ be delivered by one of the following delivery methods:

(1) ~~[(A)]~~ classroom delivery ~~[method];~~

~~[(2)]~~ ~~[(B)]~~ distance education ~~[alternative]~~ delivery ~~[method]; or~~

~~[(3)]~~ ~~[(C)]~~ a combination of (A) and (B), if:]

~~[(i)]~~ at least 50% of the combined course is offered by classroom delivery. ~~[method; and]~~

~~[(ii)]~~ the portion of the combined course offered through alternative delivery is taken from a full course that has already been certified for alternative delivery by a distance learning certification center acceptable to the Commission;]

~~[(D)]~~ a correspondence course that is offered by a provider in association with an accredited college or university if the course is offered in accordance with the college or university's accreditation association's curriculum accreditation standards; or]

~~[(E)]~~ a combination of (A) and (D), if:]

~~[(i)]~~ at least 50% of the combined course is offered by classroom method; and]

~~[(ii)]~~ the combined course is offered by a provider in association with an accredited college or university in accordance with the college or university's accreditation association's curriculum accreditation standards.]

~~[(2)]~~ Using the name of the provider "in association with" the name of the college or university on the course completion certificate constitutes certification to the Commission that the course was offered in compliance with the college or university's accreditation association's curriculum accreditation standards.]

~~[(h)]~~ ~~[(3)]~~ Except as provided in this section, non-elective ~~[Non-elective]~~ CE courses must meet the presentation requirements of §535.65(g) ~~[§535.65]~~ of this title.; and]

(1) Classroom Delivery. The provider must submit a course completion roster in accordance with §535.75(d) of this subchapter.

(2) Distance Education Delivery:

(A) Non-elective real estate courses are designed by the Commission for interactive classroom delivery. Acceptable demonstration of a method to engage distance education delivery students in interactive discussions and group activities, as well as additional material to meet the course objectives and time requirements are required for approval.

(B) The provider must submit a course completion roster in accordance with §535.75(d) of this subchapter.

~~[(4)]~~ Non-elective CE courses meet the examination requirements of §535.75 of this subchapter.]

(i) Course examinations.

(1) A provider must administer a final examination promulgated by the Commission for non-elective CE courses beginning January 1, 2017 as follows:

(A) For classroom delivery, the examination will be given as a part of class instruction with the correct answers being reviewed by the instructor and students will not be graded;

(B) For distance education delivery, the examination will be given after completion of regular course work and must be:

(i) proctored by a member of the provider faculty or staff, or third party proctor set out in §535.65(i)(5) of this title, who is present at the test site and has positively identified that the student taking the examination is the student registered for and who took the course; or

(ii) administered using a computer under conditions that satisfy the Commission that the student taking the examination is the student registered for and who took the course;

(iii) graded with a pass rate of 70% in order for a student to receive credit for the course; and

(iv) kept confidential.

(2) A provider may not give credit to a student who fails a final examination and makeup final examination.

(j) Makeup final course examination.

(1) If a student fails a final course examination, a provider may permit the student to retake the final examination only once.

(2) A student shall complete a makeup final examination no later than the 30th day after the date the original class concludes, and the second examination must be different from the first examination.

(3) A student who fails the final course examination a second time is required to retake the course prior to retaking the final course examination.

(k) [(h)] Approval of currently approved courses by a subsequent provider.

(1) If a CE provider wants to offer a course currently approved for another provider, that subsequent provider must:

(A) submit the CE [applicable] course application supplement [approval] form(s);

(B) submit written authorization to the Commission from the author or provider for whom the course was initially approved granting permission for the subsequent provider to offer the course; and

(C) pay the fee required by §535.101 or §535.210 of this title.

(2) If approved to offer the currently approved course, the subsequent provider is required to:

(A) offer the course as originally approved, including expiration date, with any approved revisions, using all materials required for the course; and

(B) meet the requirements of §535.75 of this subchapter.

(l) [(h)] Approval notice. A CE Provider shall not offer non-elective continuing education courses until the provider has received written notice of the approval from the Commission.

(m) [(j)] Required revision of a currently approved non-elective CE course. Providers are responsible for keeping current on changes to the Act and Commission Rules and must supplement materials for approved non-elective CE courses to present the current version of all applicable statutes and rules on or before the effective date of those statutes or rules.

§535.73. *Approval of Elective Continuing Education Courses.*

(a) (No change.)

(b) Application for approval of an elective CE course.

(1) For each continuing education course an applicant intends to offer, the applicant must:

(A) submit the appropriate CE Course Application form; and

(B) pay the fee required by §535.101 and §535.210 of this title.

(2) A provider may file a single application for a CE course offered through multiple delivery methods. A fee is required for content review of each CE course and for each distinct delivery method utilized by a provider for that course.

(3) A provider who seeks approval of a new delivery method for a currently approved CE course must submit a new application and pay all required fees, including a fee for content review.

(4) [(2)] The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(c) Standards for course approval of elective CE course.

(1) To be approved as an [a] elective CE course by the Commission, the course must:

(A) cover subject matter appropriate for a continuing education course for real estate or real estate inspection license holders; [and]

(B) be current and accurate; and [-]

(C) be at least one and no more than 10 hours long.

(2) A provider must [can] demonstrate that a course meets the requirements under paragraph (1) of this subsection by submitting a statement describing the objective of the course and the relevance of [how] the subject matter [is related] to activities for which a real estate or inspector [a] license [holder] is required [to meet], including but not limited to relevant issues in the real estate market or topics which increase or support the license holder's development of skill and competence.

(3) The course must be presented in full hourly units.

(4) The course must be delivered by one of the following delivery methods:

(A) classroom delivery [method];

(B) distance education [alternative] delivery [method];

or

(C) a combination of (A) and (B), if[-]

[(h)] at least 50% of the combined course is offered by classroom delivery. [method; and]

[(i)] the portion of the combined course offered through alternative delivery is taken from a full course that has already been certified for alternative delivery by a distance learning certification center acceptable to the Commission; or[-]

[(D)] a correspondence course that is offered by a provider in association with an accredited college or university if the course is offered in accordance with the college or university's curriculum accreditation standards. Using the name of the provider "in

association with" the name of the college or university on the course completion certificate constitutes certification to the Commission that the course was offered in compliance with the college or university's curriculum accreditation standards under this subsection.]

~~[(5) Elective CE courses meet the presentation requirements of §535.65 of this title; and]~~

~~[(6) Elective CE courses meet the examination requirements of §535.75 of this subchapter.]~~

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

§535.74. Approval of Continuing Education Instructors [for Elective Courses].

~~[(a) General requirements.]~~

~~[(1) This subsection applies to a person seeking approval from the Commission to be an elective CE course instructor.]~~

~~[(2) Non-elective CE course instructors are approved and regulated under §535.63 of this title.]~~

~~(a) [(b)] Application for approval.~~

(1) A person desiring to be approved by the Commission to be an instructor for elective real estate or real estate inspection CE courses shall:

(A) file an application on the appropriate form approved by the Commission; and

(B) pay the fee the required by §535.101 or §535.210 of this title.

(2) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(b) Certification required to teach real estate non-elective CE courses.

(1) An applicant may not teach a real estate non-elective CE course until the application has received written certification from the Commission to teach a specific non-elective continuing education course.

(2) To obtain certification to teach a real estate non-elective CE course, the applicant must:

(A) be currently approved by the Commission as an instructor for qualifying courses under §535.63 of this subchapter in the subject areas of:

(i) Principles of Real Estate, Law of Agency and Law of Contracts to teach Legal Update I and II; or

(ii) Principles of Real Estate, Law of Agency, Law of Contracts and Real Estate Brokerage to teach Broker Responsibility;

(B) successfully complete an instructor training program approved by the Commission for the non-elective CE course for which certification is sought; and

(C) receive a passing grade of at least 80% on the course final examination promulgated by the Commission.

(3) A previously certified instructor must be recertified to teach a non-elective CE course whenever the previous course has expired and a new course has been approved.

(4) An instructor's certification to teach a legal update course expires on December 31 of every odd-numbered year.

(5) An instructor's certification to teach the broker responsibility course expires on December 31 of every even-numbered year.

(c) To be approved as an instructor of Texas Standards of Practice/Legal/Ethics Update, or as an instructor of a ride along inspection course as defined in §535.218 of this title, an applicant must have five years of active licensure as a Texas professional inspector, and have:

(1) performed a minimum of 200 real estate inspections as a Texas professional inspector; or

(2) three years of experience in teaching and/or sponsoring trainees or inspectors.

(d) Approval notice. An applicant shall not act as or represent itself to be an approved real estate inspection instructor until the applicant has received written notice of the approval from the Commission.

(e) [(e)] Standards for instructor approval for continuing elective education courses. To be approved as an instructor by the Commission to teach real estate or real estate inspection elective CE [continuing education] courses, the applicant must satisfy the Commission [commission] as to:

(1) the applicant's honesty, trustworthiness, and integrity; and

(2) the person's competency in the subject matter to be taught and ability to teach effectively.

(f) [(f)] Approval notice. An applicant shall not act as or represent itself to be an approved elective CE instructor until the applicant has received written notice of the approval from the Commission.

(g) [(g)] Period of [initial] approval. The [initial] approval of an elective CE instructor is valid for two years.

(h) [(h)] Disapproval of an application.

(1) If the Commission determines that an applicant does not meet the standards for approval, the Commission shall disapprove the application and provide written notice of the disapproval to the applicant.

(2) The disapproval notice, applicant's request for a hearing on the disapproval, and any hearing are governed by the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 533 of this title (relating to Practice and Procedure). Venue for any hearing conducted under this section shall be in Travis County.

(i) [(g)] Subsequent approval [Renewal].

(1) Not earlier than 90 days before the expiration of its current approval, a CE instructor may apply for approval [renewal] for another two year period.

(2) Approval or disapproval of a subsequent [renewal] application shall be subject to the standards for initial applications for approval set out in the section.

§535.75. Responsibilities and Operations of Continuing Education Providers.

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

(c) CE course examinations. Examinations are only required for CE courses offered through distance education [alternative delivery or correspondence] delivery and must comply with the requirements in §535.72(i)(1)(B) [§535.66] of this subchapter and have a minimum of four questions per course credit hour [title].

(d) Course completion roster. Instead of providing a course completion certificate, upon completion of a course, a CE provider shall submit a class roster to the Commission as outlined by this subsection.

(1) Classroom:

(A) A provider shall submit to the Commission a class roster in a format approved by the Commission not later than the 10th day after the date a course is completed.

(B) A course completion roster shall include:

- (i) the provider's name and license;
- (ii) a list of all instructors whose services were used in the course;
- (iii) the course title;
- (iv) course numbers[; ~~including any Commission pre-approval number received~~];
- (v) the number of classroom credit hours[; ~~or other recognized educational unit involved in the course~~];
- (vi) the date of issuance;
- (vii) the dates the student registered for, began and completed the course; and
- (viii) the signature of an authorized representative of the provider who was in attendance and for whom an authorized signature is on file with the Commission.

(C) The Commission shall not accept signature stamps or unsigned course completion rosters.

(2) Distance Education [~~Alternative or correspondence~~] delivery method [~~methods~~]. A provider shall submit a Distance Education [~~an Alternative/Correspondence~~] Instructional Methods Reporting form[; ~~or information contained in that form~~] by electronic means acceptable to the Commission, for each student completing the course not earlier than the number of hours for course credit [~~24 hours~~] after the student starts the course and not later than the 10th day after the student completed the course.

(3) A provider may withhold any official completion documentation required by this subsection from a student until the student has fulfilled all financial obligations to the provider.

(4) A provider shall maintain adequate security against forgery for official completion documentation required by this subsection.

(e) (No change.)

(f) Changes in Ownership or Operation of an approved CE Provider. Changes in Ownership or Operation of an approved CE Provider are governed by this subsection.

(1) An approved provider shall obtain the approval of the Commission at least 30 days in advance of any material change in the operation of the provider, including but not limited to changes in:

- (A) ownership;
- (B) management; and
- (C) the location of main office and any other locations where courses are offered.

(2) An approved provider requesting approval of a change in ownership shall provide a Principal Information Form for each pro-

posed new owner who would hold at least a 10% interest in the provider to the Commission.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 20, 2015.

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Kerri Lewis

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 936-3092



SUBCHAPTER I. LICENSE RENEWAL

22 TAC §535.91, §535.92

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.91, Renewal of a Real Estate License and §535.92, Continuing Education Requirements, in Chapter 535, General Provisions.

The amendments to Chapter 535, Subchapter I are proposed to align the rule with statutory changes to Chapter 1101, Texas Occupations Code, adopted by the 84th Legislature in SB 699, to increase the number of hours of continuing education required for renewal, to allow continuing education credit for attendance at a Commission meeting, to only require designated brokers of entities that sponsor sales agents take the broker responsibility course and to remove the provision regarding legislative waiver since it is adequately addressed in the statute. The Education Standards Advisory Committee recommended that the number of continuing education hours be increased by 2 hours, however the Commission chose to increase it by 3 hours, as permitted by the statute.

The amendments also allow an active duty military service member two additional years to renew a license in compliance with statutory changes in SB 1307, adopted by the 84th Legislature, effective September 1, 2105.

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

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be requirements that are consistent with the statute and better educated license holders thereby providing greater consumer protection.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.91. Renewal of a Real Estate License.

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

(d) Initial renewal of salespersons license. A salesperson applying for the first renewal of a salesperson license must:

(1) submit documentation to the Commission showing successful completion of the additional educational requirements of §535.55 of this chapter no later than 10 business days before the day the salesperson files the renewal application; and[-]

(2) fulfill the continuing education requirements of §535.92 of this subchapter.

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

(i) Renewal of license for ~~[active duty]~~ military service member. A license holder on active duty in the United States armed forces is entitled to two years of additional time to [serving outside the State of Texas may] renew an expired license without being subject to any increase in fee, any education or experience requirements or examination if the license holder:

(1) provides a copy of official orders or other official documentation acceptable to the Commission showing that the license holder was on active duty ~~[outside the State of Texas]~~ during the license holder's [licensee's] last renewal period; and

~~[(2)]~~ applies for the renewal not later than the 90th day after the date the license holder's active duty ends; and

(2) ~~[(3)]~~ pays the renewal application fee in effect when the previous license expired.

§535.92. Continuing Education Requirements.

(a) Required continuing education. ~~18~~ [45] hours of continuing education are required for each renewal of a real estate salesperson or broker license and must include:

(1) a ~~four~~ [three] hour Legal Update I: Laws, Rules and Forms [legal update] course;

(2) a ~~four~~ [three] hour Legal Update II: Agency, Ethics and Hot Topics [ethics] course; and

(3) a six hour broker responsibility course, if the license holder:

(A) sponsors one or more salespersons at any time during the current license period; [or]

(B) is a designated broker of a business entity that sponsors one or more salespersons at any time during the designated broker's current license period; or

(C) is a delegated supervisor of one or more license holders for a period of six months or more during the supervisor's [supervisors] current license period.

~~[(b)]~~ Legislator waiver. A license holder who is a current member of the Texas Legislature is not required to take the three hour ethics course required under subsection (a) of this section.]

~~(b)~~ [(e)] Awarding continuing education credit. The Commission will award credit to a license holder for an approved continuing education course upon receipt of a course completion roster from a CE provider as required under §535.75 of this title.

~~(c)~~ [(d)] Continuing education credit for qualifying courses. Real estate license holders may receive continuing education elective credit for qualifying real estate courses or qualifying real estate inspection courses that have been approved by the Commission or that are accepted by the Commission for satisfying educational requirements for obtaining or renewing a license. Qualifying real estate courses must be at least 30 classroom hours in length to be accepted for continuing education elective credit.

~~(d)~~ [(e)] Continuing education credit for course taken outside of Texas. A course taken by a Texas license holder to satisfy continuing education requirements of a country, territory, or state other than Texas may be approved on an individual basis for continuing education elective credit in Texas upon the Commission's determination that:

(1) the Texas license holder held an active real estate license in the a country, territory, or state other than Texas at the time the course was taken;

(2) the course was approved for continuing education credit for a real estate license by the a country, territory, or state other than Texas and, if a correspondence course, was offered by an accredited college or university;

(3) the Texas license holder's successful completion of the course has been evidenced by a course completion certificate, a letter from the provider or such other proof as is satisfactory to the commission;

(4) the subject matter of the course was predominately devoted to a subject acceptable for continuing education credit in Texas; and

(5) the Texas license holder has filed a Credit Request for an Out of State Course Credit Request, with the Commission.

~~(e)~~ [(f)] Continuing education credit for courses offered by the State Bar. To request continuing education elective credit for real estate related courses approved by the State Bar of Texas for minimum continuing legal education participatory credit, a license holder is required to file an Individual Credit Request for State Bar Course.

~~(f)~~ [(g)] Continuing education credit for courses required for a professional designation. A course taken by a license holder to obtain any of the following professional designations, or any other real estate related professional designation course deemed worthy by the Commission, may be approved on an individual basis for continuing education elective credit if the license holder files for credit for the course using Individual Elective Credit Request for Professional Designation Course and provides the Commission with a copy of the course completion certificate.

(1) ABR--Accredited Buyer Representative

(2) CRE--Counselor in Real Estate

(3) CPM--Certified Property Manager

(4) CCIM--Certified Commercial-Investment Member

(5) CRB--Certified Residential Broker

(6) CRS--Certified Residential Specialist

(7) GRI--Graduate, Realtor Institute

(8) IREM--Institute of Real Estate Management

(9) SIOR--Society of Industrial and Office Realtors

(g) Continuing education credit for attendance at Commission meeting. A real estate license holder may receive up to four hours of continuing education elective credit per license period for attendance in person at a February Commission meeting.

(h) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Kerri Lewis

General Counsel

Texas Real Estate Commission

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SUBCHAPTER J. FEES

22 TAC §535.101

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.101, Fees, in Chapter 535, General Provisions.

The amendments to Chapter 535, Subchapter J are proposed to align the rule with statutory changes to Chapter 1101, Texas Occupations Code, adopted by the 84th Legislature and rule changes to the education course delivery standards. A charge for providing certified copies of documents was also added.

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

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be requirements that are consistent with the statute.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.101. Fees.

(a) The Commission shall charge and collect the following fees:

(1) a fee of \$150 for filing an original or reinstatement application for a real estate broker license, which includes a fee for transcript evaluation;

(2) a fee of \$72 for the timely renewal of a real estate broker license;

(3) a fee of \$120 for filing an application to step down from a real estate broker license to a real estate salesperson license;

(4) a fee of \$150 for filing an original or reinstatement application for a real estate salesperson license, which includes a fee for transcript evaluation;

(5) a fee of \$72 for the timely renewal of a real estate salesperson license;

(6) a fee equal to 1-1/2 times the timely renewal fee for the late renewal of a license within 90 days of expiration;

(7) a fee equal to 2 times the timely renewal fee for the late renewal of a license more than 90 days but less than six months after expiration;

(8) a fee of \$50 for filing a request for, or renewal of, a license for each additional office or place of business for a period of two years;

(9) a fee of \$54 for taking a license examination;

(10) a fee of \$10 for deposit into the real estate recovery trust account upon the filing of an original salesperson or broker application;

(11) a fee of \$20 for filing a request for a license certificate due to a change of place of business, change of a license holder name, or to establish a relationship with a sponsoring broker;

(A) A change of address or name submitted with an application to renew a license, however, does not require payment of a fee in addition to the fee for renewing the license

(B) The Commission may require written proof of a license holder's right to use a different name before issuing a license certificate reflecting a change of name.

(12) a fee of \$50 to request an inactive broker license be returned to active status;

(13) a fee of \$40 for preparing a certificate of license history, active licensure, or sponsorship;

(14) a fee of \$50 for filing a moral character determination;

(15) a fee of \$400 for filing an application for accreditation of a qualifying education program for a period of four years;

(16) after initial approval of accreditation, a fee of \$200 a year for operation of a qualifying real estate education program;

(17) a fee of \$50 plus the following fees [\$20] per classroom hour approved by the Commission for each qualifying education course for a period of four years;

(A) \$10 for content and examination review;

(B) \$10 for classroom delivery design and presentation review; and

(C) \$20 for distance education delivery design and presentation review;

(18) a fee of \$400 for filing an application for accreditation as a Continuing Education provider for a period of two years;

(19) a fee of \$50 plus the following fees [~~\$10~~] per classroom hour approved by the Commission for each continuing education course for a period of two years;

(A) \$5 for content and examination review;

(B) \$5 for classroom delivery design and presentation review; and

(C) \$10 for distance education delivery design and presentation review;

(20) the fee required under subsections 17(C) and 19(C) will be waived if the course has already been certified by a distance learning certification center acceptable to the Commission.

(21) [~~(20)~~] a fee of \$150 for filing an application for approval as an instructor for a two-year period for real estate qualifying or continuing education courses;

(22) [~~(21)~~] the fee charged by the Federal Bureau of Investigation and Texas Department of Public Safety for fingerprinting or other service for a national or state criminal history check in connection with a license application or renewal;

(23) [~~(22)~~] the fee required by the Department of Information Resources as a subscription or convenience fee for use of an online payment system;

(24) [~~(23)~~] a continuing education deferral fee of \$200;

(25) [~~(24)~~] a late reporting fee of \$250 to reactivate a license under §535.93 of this title

(26) [~~(25)~~] a fee of \$30 for processing a check or other equivalent instrument returned by a bank or depository as dishonored for insufficient funds; [~~and~~]

(27) [~~(25)~~] a fee of \$20 for filing any application, renewal, change request, or other record on paper that a person may otherwise file with the Commission electronically by accessing the Commission's website, entering the required information online, and paying the appropriate fee; and [-]

(28) a fee of \$20 per certification when providing certified copies of documents.

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Kerri Lewis

General Counsel

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SUBCHAPTER N. SUSPENSION AND REVOCATION OF LICENSURE

22 TAC §§535.144, 535.146, 535.148, 535.161

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §§535.144, When Acquiring or Disposing of Own Property of Spouse, Parent or Child; 535.146, Maintaining Trust Money; 535.148, Receiving an Undisclosed Commission or Rebate; and 535.161, Failing to Provide Information, in Chapter 535, General Provisions.

The amendments to Chapter 535, Subchapter N are proposed to provide greater clarity in the rules, to require a monthly accounting to a beneficiary of trust money held by a license holder if there has been any activity in the beneficiary's account and align the rules with statutory changes to Chapter 1101, Texas Occupations Code, adopted by the 84th Legislature in SB 699. Additionally, TREC Form RSC-1 Disclosure of Relationship with Residential Service Company is updated and proposed for adoption by reference.

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

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be greater clarity leading to better adherence to the rules.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102, to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102, and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.144. *When Acquiring or Disposing of Own Property or Property of Spouse, Parent or Child.*

(a) For purposes of §1101.652(a-1)(1) [~~§1401.652(a)(3)~~] of the Act[-]

[(1) "a person related to the license holder within the first degree by consanguinity" means a license holder's parent or child; and]

[(2)] "license holder" includes a license holder acting on behalf of:

(1) [(A)] the license holder's spouse, parent or child;

(2) [(B)] a business entity in which the license holder is more than a 10% owner; or

(3) [(C)] a trust for which the license holder acts as trustee or of which the license holder or the license holder's spouse, parent or child is a beneficiary..

(b) A license holder engaging in a real estate transaction on his or her own behalf or in a capacity described by [defined in] subsec-

tion (a), is obligated to disclose in writing that he or she is a licensed real estate broker or salesperson acting on his or her own behalf or in a capacity described by subsection (a) in any contract of sale or rental agreement or in any other writing given before entering into any contract of sale or rental agreement.

(c) A license holder acting on his or her own behalf or in a capacity described by ~~under~~ subsection (a) [~~or §1101.652(a)(3) of the Act~~] shall not use the license holder's expertise to the disadvantage of a person with whom the license holder deals.

§535.146. *Maintaining Trust Money.*

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

(c) Trust account requirements.

(1) The trust account must be clearly identified as a trust account;

(2) The broker may, but is not required to, maintain separate trust accounts for each client or type of trust money maintained by the broker, such as earnest money deposits or security deposits received for the management of rental property.

(3) If trust money held by a broker is deposited in an interest bearing account:

(A) the money must be available for disbursement at the appropriate time; and

(B) unless otherwise provided for by an agreement signed by the party depositing the money with the broker, any interest earned on the money must be distributed to any parties to whom the money is disbursed.

(4) A broker may deposit and maintain a reasonable amount of money in the trust account to cover bank service fees, including fees charged for insufficient funds. Detailed records must be kept for any funds deposited under this exception.

(5) If a broker acquires ownership of trust money held in a trust account, including entitlement to compensation, such money must be removed from the trust account not later than the 30th day after the date the broker acquires ownership of the money.

(6) The broker must retain a documentary record of each deposit or withdrawal from the trust account and provide an accounting to each beneficiary of trust money at least monthly if there has been any activity in the account.

(7) A broker may only authorize another license holder to withdraw or transfer money from any trust account but the broker remains responsible and accountable for all trust money received by that broker and all deposits to or disbursements from the trust account.

(8) If a broker deposits trust money in the form of a check in a trust account and the check is dishonored by the financial institution on which it was drawn, the broker shall immediately notify all parties to the transaction in writing.

(d) Disbursement of trust money.

(1) A broker may only disburse money from the broker's trust account in accordance with the agreement under which the money was received.

(2) If any or all of the parties to a real estate transaction make a written demand for payment of trust money, the broker must pay the trust money to the party or parties entitled to the money within a reasonable time, which the Commission has determined to be not later than the 30th day after the date the demand is made.

(3) If by a subsequent written agreement, all parties to a real estate transaction authorize the broker maintaining trust money to disburse the trust money in a manner not in accordance with the agreement under which the money was received, the broker must pay the trust money to the party or parties entitled to the money under the subsequent written agreement within a reasonable time, which the Commission has determined to be not later than the 30th day after the date the broker receives the subsequent written agreement.

(4) The broker must immediately notify all parties in writing of any disbursement of trust money under subsections (d)(2) or (3).

(5) If the broker cannot reasonably determine to which party or parties the trust money should be paid, the broker may pay the trust money into the registry of a court and interplead the parties.

(e) (No change.)

§535.148. *Receiving an Undisclosed Commission or Rebate.*

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

(e) A license holder must use TREC Form RSC-2 [RSC-1], Disclosure of Relationship with Residential Service Company, to disclose to a party to a real estate transaction in which the license holder represents one or both of the parties any payments received for services provided for or on behalf of a residential service company licensed under Texas Occupations Code Chapter 1303.

(f) The Texas Real Estate Commission adopts by reference TREC Form No. RSC-2 [RSC-1], Disclosure of Relationship with Residential Service Company, approved by the Commission for use by licensees to disclose payments received from a residential [resident] service company. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§535.161. *Failing to Provide Information.*

For the purposes of §1101.652(a)(4) [§1101.652(a)(6)] of the Act, "reasonable time" means 10 working days from receipt of a request made by the Commission.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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General Counsel

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SUBCHAPTER O. HEARING ON SUSPENSION OR REVOCATION OF LICENSURE

22 TAC §535.171

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

The Texas Real Estate Commission (TREC) proposes the repeal of Subchapter O, Hearing on Suspension or Revocation of Licensure, §535.171, of Chapter 535, General Provisions.

The repeal is proposed to move the sole rule in Subchapter O to Chapter 533, Practice and Procedure, where the subject matter more appropriately belongs.

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

Ms. Lewis also has determined that for each year of the first five years the repeal as proposed is in effect, the public benefit anticipated as a result of enforcing the repeal will be a requirement that is easier to find.

Comments on the proposed repeal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The repeal is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed repeal.

§535.171. *Hearing: Subpoenas and Fees.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER P. ENFORCEMENT ACTION FOR UNLICENSED ACTIVITY

22 TAC §535.181

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.181, Penalty, in Chapter 535, General Provisions.

The proposed amendments to Chapter 535, Subchapter P, renames the subchapter and rule to more correctly reflect the subject matter.

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no anticipated impact on small businesses, micro-businesses

or local or state employment as a result of implementing the section. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis also has determined that for each year of the first five years the section as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be rules that are easier to locate.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.181. *Investigation and Actions [Penalty].*

If the Commission receives information that indicates that a person has engaged in unlicensed activity, it shall conduct an investigation to determine if such information is accurate. If the information establishes evidence to indicate a probable violation of the Act, the Commission may impose an administrative penalty; issue an order to cease and desist; file a complaint[;] alleging unlicensed activity[;] with the appropriate law enforcement official; or take such other action as may be necessary and proper.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER Q. ADMINISTRATIVE PENALTIES

22 TAC §535.191

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.191, Schedule of Administrative Penalties, in Chapter 535, General Provisions.

The proposed amendments to Chapter 535, Subchapter Q align the rule with statutory changes to Chapter 1101, Texas Occupations Code, adopted by the 84th Legislature in SB 699 and add missing rule violations.

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There

is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis also has determined that for each year of the first five years the section as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be requirements that are consistent with the statute and easier to locate and apply.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.191. Schedule of Administrative Penalties.

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

(c) An administrative penalty range of \$100-\$1,500 per violation per day may be assessed for violations of the following sections of the Act and Rules:

- (1) §1101.552;
- (2) §1101.652(a)(7);
- (3) §§1101.652(a-1)(3);
- ~~(2) §1101.652(a)(8);~~
- (4) ~~[(3)]~~ §1101.652(b)(23);
- (5) ~~[(4)]~~ §1101.652(b)(29);
- (6) 22 TAC §535.21(a);
- (7) ~~[(5)]~~ 22 TAC §535.91(d); ~~[and]~~
- (8) ~~[(6)]~~ 22 TAC §535.154; ~~and~~[-];
- (9) 22 TAC §535.300.

(d) An administrative penalty range of \$500-\$3,000 per violation per day may be assessed for violations of the following sections of the Act and Rules:

- (1) §§1101.652(a)(3)-(5) [~~§1101.652(a)(4) - (7)~~];
- (2) §1101.652(a-1)(2);
- (3) ~~[(2)]~~ §1101.652(b)(1);
- (4) ~~[(3)]~~ §§1101.652(b)(7)-(8);
- (5) ~~[(4)]~~ §1101.652(b)(12);
- (6) ~~[(5)]~~ §1101.652(b)(14);
- (7) ~~[(6)]~~ §1101.652(b)(22);
- (8) ~~[(7)]~~ §1101.652(b)(28);
- (9) ~~[(8)]~~ §§1101.652(b)(30)-(31);
- (10) ~~[(9)]~~ §1101.654(a);

~~(11) [(40)] 22 TAC §535.2; and~~

~~(12) [(44)] 22 TAC §535.144.~~

(e) An administrative penalty range of \$1,000-\$5,000 per violation per day may be assessed for violations of the following sections of the Act and Rules:

- (1) §1101.351;
- (2) §1101.366(d);
- (3) §1101.557(b);
- (4) §§1101.558(b)-(c);
- (5) §§1101.559(a)[~~;~~] ~~and~~ (c);
- (6) §1101.560;
- (7) §1101.561(b);
- (8) §1101.615;
- (9) §1101.651;
- (10) §§1101.652(a)(2) and (6) [~~§1101.652(a)(2) - (3)~~];
- (11) §1101.652(a-1)(1); [~~§1101.652(a)(9) - (40)~~];
- (12) §§1101.652(b)(2)-(6);
- (13) §§1101.652(b)(9)-(11);
- (14) §1101.652(b)(13);
- (15) §§1101.652(b)(15)-(21);
- (16) §§1101.652(b)(24)-(27);
- (17) §§1101.652(b)(32)-(33);
- ~~(18) 22 TAC §535.141(g);~~
- ~~(19) [(48)] 22 TAC §535.145-535.148; and~~
- ~~(20) [(49)] 22 TAC §535.156.[~~;~~]~~

(f) The Commission may assess an additional administrative penalty of up to two times that assessed under subsections (c), (d) and (e) of this section, subject to the maximum penalties authorized under §1101.702(a) of the Act, if a person has a history of previous violations.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §§535.208, 535.209, 535.216, 535.219, 535.220, 535.224

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §§535.208, 535.209, 535.216, 535.219, 535.220, and 535.224 in Subchapter R, Real Estate Inspectors.

The proposed amendments to §535.208, Application for License, and §535.216, Renewal of License, align those rules with statutory changes to Chapter 55, Texas Occupations Code, adopted by the 84th Legislature.

The proposed amendments to §535.209, Examinations, are recommended by the Texas Real Estate Inspector Advisory Committee to clarify when the Commission may waive the national portion of the inspector examination.

The proposed amendments to §535.219, Schedule of Administrative Penalties, §535.220, Professional Conduct and Ethics, and §535.224, Practice and Procedure, align those rules with statutory changes to Chapter 1101, Texas Occupations Code, adopted by the 84th Legislature.

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

Ms. Worman also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be requirements that are consistent with the statute and easier to understand, apply and process.

Comments on the proposal may be submitted to Kristen Worman, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Chapters 1101 and 1102, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§535.208. Application for a License.

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

(c) License [Expedited license] for military service members, military veterans, or military spouses. This subsection applies to an applicant who is a military service member, a military veteran, or the spouse of a person serving on active duty as a member of the armed forces of the United States.

(1) The Commission shall waive the license application and examination fees for an applicant who is:

(A) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(B) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(2) The Commission shall issue on an expedited basis a license to an applicant who holds a current certificate or license issued by a country, territory, or state other than Texas for other than Texas that has licensing requirements that are substantially equivalent to the requirements for the certificate or license issued in Texas.

(d) Credit for military service. [~~Expedited license for military spouses.~~] This subsection applies to an applicant who is [~~the spouse of a person~~] serving on active duty as a member of the armed forces of the United States. [~~The Commission shall issue on an expedited basis a license to an applicant who holds a current certificate or license issued by a country, territory, or state other than Texas for other than Texas that has licensing requirements that are substantially equivalent to the requirements for the certificate or license issued in Texas.~~]

(1) The Commission shall credit any verifiable military service, training or education obtained by an applicant that is relevant to a license toward the requirements of a license.

(2) This subsection does not apply to an applicant who holds a restricted license issued by another jurisdiction.

(3) The applicant must pass the qualifying examination for the type of license sought.

(e) (No change.)

(f) The Executive Director [administrator] may waive any prerequisite to obtaining a license for an applicant issued [issue a license] under subsection (c) or (d) [by endorsement in the same manner as the Texas Commission of Licensing and Regulation to an applicant under this subsection].

(g) - (h) (No change.)

§535.209. Examinations.

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

(c) Waiver of national portion of examination requirement. The Commission may waive the national portion of the examination of an applicant for a real estate or professional inspector license if the applicant:

(1) currently holds [maintains] an active real estate inspector license in another state or actively practices as a home inspector in compliance with the laws of another state; and

(2) has passed the National Home Inspector Examination developed by the Examination Board of Professional Home Inspectors.

(d) - (f) (No change.)

§535.216. Renewal of License.

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

(i) Renewal of license for military service member. A license holder on active duty in the United States armed forces is entitled to two years of additional time to renew an expired license without being subject to any increase in fee, any education or experience requirements or examination if the license holder:

(1) provides a copy of official orders or other official documentation acceptable to the Commission showing that the license holder was on active duty during the license holder's last renewal period; and

(2) pays the renewal application fee in effect when the previous license expired.

§535.219. Schedule of Administrative Penalties.

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

(c) An administrative penalty range of \$100 - \$1,500 per violation per day may be assessed for violations of the following sections of Chapter 1101, Chapter 1102 and this subchapter:

- (1) §1101.652(a)(7);
- (2) [(4)] §1102.118;
- (3) [(2)] §1102.364;
- (4) [(3)] 22 TAC §535.216(d);
- (5) 22 TAC §535.217;
- (6) [(4)] 22 TAC §535.220(a)-(d);
- (7) [(5)] 22 TAC §535.221; and
- (8) [(6)] 22 TAC §535.223.

(d) An administrative penalty range of \$500 - \$3,000 per violation per day may be assessed for violations of the following sections of Chapter 1101, Chapter 1102 and this subchapter:

- (1) §§1101.652(a)(3)-(4);
- (2) [(4)] §1102.301;
- (3) [(2)] 22 TAC §535.222;
- [(3)] 22 TAC §535.224(b)(1) - (3);
- (4) 22 TAC §535.226(d)-(e); and
- (5) 22 TAC §§535.227 - 535.233.

(e) An administrative penalty of \$1,000 - \$5,000 per violation per day may be assessed for violations of the following sections of Chapter 1101, Chapter 1102 and this subchapter:

- (1) §§1101.652(a)(2), (5)-(6);
- (2) [(4)] §1102.101;
- (3) [(2)] §1102.102;
- (4) [(3)] §1102.103;
- (5) [(4)] §1102.302;
- (6) [(5)] §1102.303;
- (7) [(6)] §1102.304;
- (8) [(7)] 22 TAC §535.208(f);
- (9) [(8)] 22 TAC §535.211;
- (10) [(9)] 22 TAC §535.215;
- (11) [(10)] 22 TAC §535.220(e)(1), (3)-(7); and
- (12) [(11)] 22 TAC §535.224(b)(1)-(2) [(4)-(5)].

(f) The Commission may assess an administrative penalty of up to two times that outlined under subsections (c), (d), and (e) of this section, subject to the maximum penalties authorized under §1101.702(a) of the Act, if a person has a history of previous violations [Act].

§535.220. *Professional Conduct and Ethics.*

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

(g) Each active real estate inspector licensed by the Commission shall provide the consumer notice adopted under §531.18 of this title by:

(1) displaying it in a readily noticeable location in each place of business the inspector maintains; and

(2) providing a link to it labeled "Texas Real Estate Commission Consumer Notice", in at least a 10 point font, in a readily noticeable place on the homepage of the business website of the inspector.

§535.224. *Practice and Procedure.*

(a) Proceedings shall be conducted in the manner contemplated by §§533.1 - 533.8, 533.20, 533.30 - 533.37 and 533.40 of this title and with the Texas Government Code, Chapter 2001, et seq.

(b) In addition to the grounds for disciplinary action provided in Chapter 1102, a license of an inspector may be suspended or revoked by the Commission if the inspector:

[(1) fails to make good a payment issued to the Commission not later than the 15th day after the date the Commission mails a request for payment by certified mail to the inspector's last known mailing address as reflected by the Commission's records;]

[(2) fails or refuses on demand to produce a document, book or record in his possession concerning a real estate inspection conducted by him for examination by the Commission or its authorized agent;]

[(3) fails within 10 days to provide information requested by the Commission or its authorized agent in the course of an investigation of a complaint;]

(1) [(4)] fails to maintain professional liability insurance coverage, a bond or any other security acceptable by the Commission [insurance] that provides coverage for violations of Subchapter G of Chapter 1102 during the period a license is active; or

(2) [(5)] fails to notify the Commission within 10 days of the cancellation or non-renewal of professional liability insurance coverage, a bond or any other security acceptable by the Commission [insurance] that provides coverage for violations of Subchapter G of Chapter 1102.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 20, 2015.

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Kerri Lewis

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 936-3092



SUBCHAPTER T. EASEMENT OR RIGHT-OF-WAY AGENTS

22 TAC §535.401

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.401, Required Notices, in Chapter 535, General Provisions.

The proposed amendments to Chapter 535, Subchapter T, implement statutory changes in SB 699, adopted by the 84th legislature. The legislature authorized the Commission to adopt the form and delivery method for a consumer notice regarding complaints and recovery fund availability. The proposed new form will be for mandatory use by license holders and will have to be linked to the homepage of a license holder's webpage.

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.20, 537.28, 537.30 - 537.33, 537.37, 537.39, 537.45 - 537.47

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

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be greater consumer protection.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.401. Required Notices.

(a) (No change.)

(b) Each registrant shall, before a party in a transaction other than the party the registrant represents is obligated to sell, buy, lease, or transfer a right-of-way or easement, provide to the party a copy of form ERW 4-1 completed by the registrant.

(c) ~~[(b)]~~ Each registrant shall provide the consumer notice adopted under §531.18 of this title by: ~~[display form CIC 1-1, Consumer Information Notice]~~

(1) displaying it in a readily noticeable [prominent] location in each place of business the registrant maintains; and

(2) providing a link to it labeled "Texas Real Estate Commission Consumer Notice", in at least a 10 point font, in a readily noticeable place on the homepage of the business website of the registrant.

~~[(e) Each registrant shall, before a party in a transaction other than the party the registrant represents is obligated to sell, buy, lease, or transfer a right-of-way or easement, provide to the party a copy of form ERW 4-1 completed by the registrant.]~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Kerri Lewis

General Counsel

Texas Real Estate Commission

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The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §537.20, Standard Contract Form TREC No. 9-11, §537.28, Standard Contract Form TREC No. 20-12, §537.30, Standard Contract Form TREC No. 23-13, §537.31, Standard Contract Form TREC No. 24-13, §537.32, Standard Contract Form TREC No. 25-10, §537.33, Standard Contract Form TREC No. 26-6, §537.37, Standard Contract Form TREC No. 30-11, §537.39, Standard Contract Form No. 32-3, §537.45, Standard Contract Form TREC No. 38-4, §537.46, Standard Contract Form TREC No. 39-7, §537.47, Standard Contract Form TREC No. 40-6, in Chapter 537, Professional Agreements and Standard Contracts.

Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contracts for the sale of real property. These forms are drafted and recommended for adoption by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the governor.

The Broker Lawyer Committee recommended revisions to the contract forms adopted by reference under the proposed amendments to Chapter 537 in order to align the contracts with federal rule changes promulgated by the CFPB in the TILA-RESPA Disclosure Rule, which are effective October 3, 2015; and with state statutory changes enacted by the 84th Legislature in HB 1665, SB 1367, and SB 1168, which are effective September 1, 2015.

Additional revisions to the contracts are recommended by the Broker Lawyer Committee to address issues that have arisen since the last contract revisions or due to recent case law.

The changes listed below apply to all contract forms unless specified otherwise. Paragraph numbers referenced are from the *One to Four Family Residential Contract (Resale)*.

Paragraph 3, Sales Price, now references all of the financing addenda previously contained in paragraph 4 of the old versions.

The Third Party Financing Addendum is completely rewritten and addresses both credit approval and property approval by the lender. Reverse mortgage loans are also addressed in this addendum so form OP-N, Reverse Mortgage Financing Addendum is repealed.

A new paragraph 4 is added regarding license holder disclosure. This paragraph is where a license holder will disclose that he or she is a party to the transaction or related to a party that requires disclosure under the law.

A new paragraph 6E(10), Title Notices, Notice of Water Fluctuations, is added to add new statutory notice requirement regarding the fluctuation of the level of certain impoundments of water that adjoin a property.

Paragraph 7A, Property Condition, Access, Inspections and Utilities, is amended to add a provision that hydrostatic testing must be authorized by the seller in writing.

Paragraph 9, Closing, is amended to add a provision allowing a ten-day extension of closing if the buyer's lender is required

to provide additional disclosures mandated by the TILA-RESPA Integrated Disclosure Rule.

Paragraph 9B(5) is amended to conform the language with a statutory change to the property code, noting that the buyer has to acknowledge to a tenant the buyer has acquired the property and is responsible for the return of the security deposit.

Paragraph 14, Casualty Loss, is amended to make it clear that an insurance company must permit insurance proceeds to be assigned to the buyer before the buyer can use this option after a casualty.

Paragraph 18D, Escrow Damages, is amended to take out the treble damages provision based on recent case law.

Paragraph 23, Termination Option is amended to require a 5 p.m. local time deadline for delivery of all notices under the paragraph.

License numbers are added to the Broker Information Section to facilitate compliance with the TILA-RESPA Integrated Disclosure Rule

Paragraph 13, Prorations and Rollback Taxes, in the Farm and Ranch and Unimproved Property Contract forms, is amended to provide that assessments imposed due to the seller's use or change in use of the property are the seller's responsibility.

A new Paragraph 2D to the Condominium Contract Form is added to address situations where the condominium documents reveal the existence of a right of first refusal after the parties enter into a contract.

The Condominium Resale Certificate is amended to conform to new statutory disclosure requirements.

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

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be greater clarity and consumer protection.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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

§537.20. *Standard Contract Form TREC No. 9-12* [~~11~~].

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 9-~~12~~ [~~11~~] approved by the Commission in 2015 [2014] for use in the sale of unimproved property where intended use is for one to four family residences.

§537.28. *Standard Contract Form TREC No. 20-13* [~~12~~].

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 20-~~13~~ [~~12~~] approved by the Commission in 2015 [2014] for use in the resale of residential real estate.

§537.30. *Standard Contract Form TREC No. 23-14* [~~13~~].

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 23-~~14~~ [~~13~~] approved by the Commission in 2015 [2014] for use in the sale of a new home where construction is incomplete.

§537.31. *Standard Contract Form TREC No. 24-14* [~~13~~].

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 24-~~14~~ [~~13~~] approved by the Commission in 2015 [2014] for use in the sale of a new home where construction is completed.

§537.32. *Standard Contract Form TREC No. 25-11* [~~10~~].

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 25-~~11~~ [~~10~~] approved by the Commission in 2015 [2014] for use in the sale of a farm or ranch.

§537.33. *Standard Contract Form TREC No. 26-7* [6].

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 26-~~7~~ [6] approved by the Commission in 2015 [2012] for use as an addendum concerning seller financing.

§537.37. *Standard Contract Form TREC No. 30-12* [~~11~~].

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 30-~~12~~ [~~11~~] approved by the Commission in 2015 [2014] for use in the resale of a residential condominium unit.

§537.39. *Standard Contract Form TREC No. 32-4* [3].

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 32-~~4~~ [3] approved by the Commission in 2015 [2012] for use as a condominium resale certificate.

§537.45. *Standard Contract Form TREC No. 38-5*[4].

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 38-~~5~~ [4] approved by the Commission in 2015 [2012] for use as a notice of termination of contract.

§537.46. *Standard Contract Form TREC No. 39-8*[7].

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 39-~~8~~ [7] approved by the Commission in 2015 [2012] for use as an amendment to promulgated forms of contracts.

§537.47. *Standard Contract Form TREC No. 40-7*[6].

The Texas Real Estate Commission (Commission) adopts by reference standard contract form, TREC No. 40-~~7~~ [6] approved by the Commission in 2015 [2014] for use as an addendum to be added to promulgated forms of contracts when there is a condition for third party financing.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Kerri Lewis

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3092



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 19. AGENTS' LICENSING SUBCHAPTER I. LICENSING FEES

28 TAC §19.802

The Texas Department of Insurance proposes amending 28 Texas Administrative Code §19.802, establishing licensing fees for applicants seeking a provisional permit. The proposed amendments to §19.802 are necessary to implement House Bill (HB) 2145, 84th Legislature, Regular Session, effective September 1, 2015, which authorizes the provisional permit.

HB 2145 enacts Insurance Code Chapter 4001, Subchapter H, §§4001.351 - 4001.359. The provisional permit is available to individual applicants under Insurance Code Chapter 4051, Subchapters B and E and Chapter 4054, Subchapters B, D, and E. The applicants must have passed the required licensing examination, met the requirements described in Insurance Code §4001.353, including submitting a completed application and fingerprints for criminal history, and paid the required licensing application fee and provisional permit fee.

TDI proposes amending §19.802(b)(21) to establish the provisional permit application fee in the amount of \$50.

The amendment replaces the fee for a temporary public insurance adjuster certificate. The authority to issue a temporary public insurance adjuster certificate was withdrawn under Senate Bill (SB) 1060, 84th Legislature, Regular Session, effective September 1, 2015. TDI has also proposed a nonsubstantive change in §19.802(a) to reflect TDI style guidelines.

FISCAL NOTE. Ms. Jamie Walker, associate commissioner, Licensing Services Section, Financial Regulation Division, has determined that, for each year of the first five years the proposed amended section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section. This is because although TDI will collect additional fees under this proposal, TDI has a self-leveling budget under the maintenance tax. The amended section will have no effect on local employment or the local economy.

PUBLIC BENEFIT/COST NOTE. Ms. Walker has also determined that for each year of the first five years the proposed amended section is in effect, the anticipated public benefit will be that applicants, their agency employers, and insurers will have greater certainty concerning when applicants may begin work if temporary delays occur in the overall licensing process.

Insurance Code §4001.353 authorizes TDI to set a nonrefundable fee in an amount that is reasonable and necessary to implement Insurance Code Chapter 4001, Subchapter H, but that

does not exceed the amount of the fee required for an application for a permanent license. To implement the subchapter, TDI anticipates that processing provisional permit applications will cause changes to TDI's processes and activities resulting in additional costs.

These additional activities and costs are similar to those TDI experiences with the issuance of a temporary license under Insurance Code §4001.151. Specifically, processing the applications will cause TDI to revise workflow within the Agent and Adjuster Licensing Office to maintain the level of consumer and industry protection that is currently available, including designating staff to process applications and review responses to background screening questions and prior criminal history activity. Staff will also be assigned new duties related to corresponding with applicants and appointing agents, insurers, and HMOs. TDI also expects increased enforcement activity and costs will result from the provisional permit process.

The reasonable and necessary cost for these activities would be similar to those for a temporary license. The current temporary license fee is \$100 per application. The license application fee for each license under Insurance Code Chapter 4051, Subchapters B and E and Chapter 4054, Subchapters B, D, and E is \$50. Because the provisional permit application fee may not exceed the license application fee, TDI has set the nonrefundable permit application fee at \$50.

The permit is not required to obtain a license. Whether an applicant chooses to incur the nonrefundable permit application fee is a business decision of the applicant.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES. Government Code §2006.002(c) requires that if a proposed rule may have an adverse economic impact on small and micro-businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule.

TDI has determined that because this amendment affects individual applicants, all persons seeking a provisional permit would be a small or micro-business. TDI does not consider that alternative methods of achieving the purpose of the rule would be viable or practical when distinguishing between applicants who are individuals.

Further, Insurance Code §4001.353 authorizes TDI to set a nonrefundable fee that is reasonable and necessary to implement Insurance Code Chapter 4001, Subchapter H, but that does not exceed the amount of the fee required for an application for a permanent license. To implement the subchapter, TDI anticipates that processing provisional permit applications will cause TDI to perform additional activities and result in an additional costs. Processing the applications will cause TDI to revise workflow within the Agent and Adjuster Licensing Office to maintain the level of consumer and industry protection currently available, including designating staff to process applications and review responses to background screening questions and prior criminal history activity and corresponding with applicants and appointing agents, insurers, and HMOs.

The reasonable and necessary cost for these activities would be similar to those for a temporary license. The current temporary license fee is \$100 per application. The license application fee for each license under Insurance Code Chapter 4051, Subchap-

ters B and E and Chapter 4054, Subchapters B, D, and E is \$50. Because the provisional permit application fee may not exceed the license application fee, TDI has set the nonrefundable permit application fee at \$50.

In accord with Government Code §2006.002(c-1), TDI has determined that because the purpose of performing the background review under Insurance Code §4001.353 is to protect insurer and consumer economic interests and the state's economic welfare, there are no regulatory alternatives to the requirement to perform applicant reviews on an expedited basis that will sufficiently protect the economic interests of insurers and consumers and the economic welfare of the state.

TAKINGS IMPACT ASSESSMENT. TDI 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, so this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider written comments received no later than 5:00 p.m., Central time, on October 5, 2015. Submit all comments to the chief clerk by email at chiefclerk@tdi.texas.gov, or by mail to Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of your comments by email to Jamie Walker at jamie.walker@tdi.texas.gov, or by mail to Jamie Walker, Associate Commissioner, Licensing Services Section, Financial Regulation Division, Texas Department of Insurance, Mail Code 305-2A, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, you must submit the request separately to the chief clerk before the close of the public comment period. If a hearing is held, attendees may present written comments and public testimony at the hearing.

STATUTORY AUTHORITY. TDI proposes the amendments under Insurance Code §4001.353 and §36.001. Section 4001.353 provides that the department shall establish a nonrefundable fee in an amount that is reasonable and necessary to implement Insurance Code Chapter 4001, Subchapter H, and does not exceed the amount of the fee required for an application for a permanent license. Section 36.001 authorizes the commissioner to adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The proposal affects Insurance Code §4001.353.

§19.802 Amount of Fees.

(a) With each application for original license or renewal, notice of appointment, request for examination, or registration or renewal of registration, the applicant, licensee, or registrant must submit the amount shown in this section. The fees for examinations and reexaminations only apply if TDI [the Texas Department of Insurance] does not contract with a testing service for the provisions of these examinations.

(b) The amounts of fees are as follows:

(1) - (20) (No change.)

(21) Provisional permit application fee is \$50 in addition to the original license application fee for each license type. [Public insurance adjuster temporary training certificate:]

~~[(A) training certificate--\$50;]~~

~~[(B) renewal--\$50.]~~

(22) - (24) (No change.)

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 24, 2015.

TRD-201503354

Sara Waitt

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 676-6584



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 20. RULEMAKING

30 TAC §20.15

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §20.15.

Background and Summary of the Factual Basis for the Proposed Rule

This rulemaking implements House Bill (HB) 763, 84th Texas Legislature, 2015, authored by Representative Susan King, which provides the definition of "interested person" for the purposes of filing a petition for rulemaking.

Section Discussion

§20.15, Petition for Adoption of Rules

The commission proposes to amend subsection (a) to implement new subsection (d) of Texas Government Code, §2001.021 in Section 1 of HB 763. HB 763 Section 1, requires that a petition for rulemaking be filed by an interested person, and defines interested person as: Texas resident, a business entity located in Texas, a governmental subdivision located in Texas, or a public or private organization located in Texas. HB 763 also specifically excludes state agencies from the definition of "interested person." For clarity, the existing subsection (a) has been divided into two subsections. The specific requirements regarding the contents of a petition for rulemaking have been moved to subsection (b) and the remaining subsections have been relettered.

Additionally, in subsection (a) the commission proposes to add the word "interested" to clarify that only interested persons may file a petition for rulemaking.

The commission proposes to amend subsection (c) by providing that a petition may be denied for failure to comply with the requirements of subsection (a) or (b).

The commission also proposes to amend subsection (d) by replacing the acronym APA with Administrative Procedure Act.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, has determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government due to limiting the definition of "interested person" for the purposes of filing a petition for rulemaking.

The proposed rule implements HB 763, 84th Texas Legislature, 2015, and provides the definition of "interested person" for the purposes of filing a petition for rulemaking. The proposed amendment to subsection (a) would implement the amendments to Texas Government Code, §2001.021 in HB 763, Section 1. HB 763 Section 1, requires that a petition for rulemaking be filed by an interested person, and defines interested person as: Texas resident, a business entity located in Texas, a governmental subdivision located in Texas, or a public or private organization located in Texas. HB 763 also specifically excludes state agencies from the definition of "interested person."

The proposed rule will limit the type of person that can petition the TCEQ for rulemaking. No fiscal implications are anticipated for units of state or local government by defining the scope of persons that can file a petition for rulemaking.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule would be compliance with state law.

No fiscal implications are anticipated for businesses or individuals as a result of the implementation of the proposed rule. The proposed rule provides the definition of "interested person" for the purposes of filing a petition for rulemaking. The proposed rule would require that a petition for rulemaking be filed by an interested person, and defines interested person as: Texas resident, a business entity located in Texas, a governmental subdivision located in Texas, or a public or private organization located in Texas. No fiscal implications are anticipated for individuals or businesses by defining the scope of persons that can file a petition for rulemaking.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. The proposed rule would have the same effect on a small business as it does on a large business. The proposed rule will limit the type of person that can petition the TCEQ for rulemaking. No fiscal implications are anticipated for businesses as a result of defining the scope of persons that can file a petition for rulemaking.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is necessary to comply with state law and does not adversely affect a small or micro-businesses in a material way for the first five years that the proposed rule is in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. 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. The proposed amendments to Chapter 20 are not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, the rulemaking revises procedural rules regarding who may submit a petition for rulemaking to the commission. The primary purpose of the proposed rulemaking is to implement changes made to the Texas Government Code in HB 763.

The rulemaking is procedural in nature and does not 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.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed 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 adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the proposed amendment to Chapter 20 revises procedural rules regarding the persons that may submit a rulemaking petition to the commission and are procedural in nature. The primary purpose of the proposed rulemaking is to implement changes made to the Texas Government Code in HB 763. This proposed rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the requirements of the law described in the Statutory Authority section of this rulemaking.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendment to Chapter 20 revises procedural rules regarding the persons that may submit a rulemaking petition to the commission. Promulgation and enforcement of the proposed rulemaking will not burden private real property. The proposed rule does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action

does not meet the definition of a taking under Texas Government Code, §2007.002(5).

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on September 29, 2015 at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2015-023-020-LS. The comment period closes on October 5, 2015. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Kathy Humphreys, Environmental Law Division, at (512) 239-3417.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and Texas Government Code, §2001.021, concerning Petition for Adoption of Rules.

The proposed amendment implements Texas Government Code, §2001.021, Petition for Adoption of Rules, and HB 763 (84th Texas Legislature, 2015).

§20.15. *Petition for Adoption of Rules.*

(a) Any interested person may petition the commission to request the adoption of a rule. For the purposes of this section, an interested person must be:

- (1) a resident of Texas;
- (2) a business entity located in Texas;
- (3) a governmental subdivision located in Texas; or
- (4) a public or private organization located in Texas that is not a Texas state agency.

(b) Petitions shall be submitted in writing to: Executive Director, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, and shall comply with the following requirements:

- (1) each rule requested must be submitted by separate petition;
- (2) each petition must state the name and address of the petitioner;
- (3) each petition shall include:
 - (A) a brief explanation of the proposed rule;
 - (B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the text of the current rule, if any;
 - (C) a statement of the statutory or other authority under which the proposed rule is to be promulgated; and
 - (D) an allegation of injury or inequity that could result from the failure to adopt the proposed rule.

(c) [(b)] A petition may be denied for failure to comply with the requirements of subsection (a) or (b) of this section.

(d) [(e)] Within 60 days after submission of a petition, the commission shall consider the petition and shall either deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with the Administrative Procedure Act [APA].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2015.

TRD-201503324

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 239-2613



CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes an amendment to §336.2; the repeal of §336.357; and new §336.357 and §336.739.

Background and Summary of the Factual Basis for the Proposed Rules

The commission proposes changes to Chapter 336, Subchapters A and D that will revise the commission's rules concerning physical protection of radioactive material to ensure compatibility with federal regulations promulgated by the Nuclear Regulatory Commission (NRC) which is necessary to preserve the status of Texas as an Agreement State under Title 10 Code of Federal Regulations (CFR) Part 150 and under the "Articles of Agreement Between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended." Rules which are designated by NRC as compatibility items must be adopted by an Agreement State within three years of the effective date of the NRC rules, in most cases.

In response to efforts to assess security risks posed by uncontrolled sources, the NRC issued Order EA-05-090 (Increased Controls (IC) Order) on November 14, 2005, to impose requirements for the control of high-risk radioactive materials to prevent inadvertent and intentional unauthorized access, primarily due to the potential health and safety hazards posed by the uncontrolled material.

The IC Order identified certain radionuclides of concern and established control measures for licensees to secure those materials. Part of this order was the requirement to determine that each person who requires access to radioactive material quantities of concern to perform their job duties is sufficiently trustworthy and reliable. Section 652 of the Energy Policy Act of 2005, enacted on August 8, 2005, amended Section 149 (the fingerprinting requirements) of the Atomic Energy Act (AEA) to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check for "any individual who is permitted unescorted access to radioactive materials or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks." The NRC issued Order EA-07-305 in December 5, 2007 to expeditiously implement, in part, these additional requirements as enhancements to the existing trustworthiness and reliability requirements of the IC Order.

As part of both orders, each Agreement State was required to issue legally binding requirements to put essentially identical measures in place for licensees under state regulatory jurisdiction. The commission has already imposed the requirements of the NRC orders on licensees by adding a condition on their radioactive material license that requires the licensee to follow the two NRC orders. Additionally, the commission has adopted rules to implement the IC Order on January 11, 2012.

The NRC adopted both orders, the IC Order and the order requiring fingerprinting and an FBI criminal background check, into 10 CFR on March 19, 2013, with modifications to the requirements in the IC Order based on public comments. The modifications to the requirements from the IC Order will result in the original rules (adopted in January 11, 2012) being removed in their entirety and replaced with the new, modified rule language. This rulemaking will also add new rules concerning the order requiring fingerprinting and an FBI criminal background check. The NRC completed additional rulemaking in January 26, 2015, which modified slightly the federal rules adopted in March 19, 2013. These modifications have been incorporated into the proposed rules.

This proposed rulemaking also implements requirements relating to volume reduction from Senate Bill (SB) 347, 83rd Texas Legislature, 2013, and its amendments to Texas Health and Safety Code (THSC), Chapter 401 (also known as the Texas Radiation Control Act (TRCA)). In keeping with amendments to THSC, §401.207, new provisions in Chapter 336 prohibit the compact waste disposal facility license holder from accepting nonparty compact waste for disposal at the facility unless the waste meets the requirements of §336.739.

Section by Section Discussion

In addition to the proposed amendments, various stylistic, non-substantive changes are included to update rule language to current *Texas Register* style and format requirements. Such changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally are not specifically discussed in this preamble.

§336.2, *Definitions*

The commission proposes to modify §336.2 to add 21 new definitions. Quantities of significant concern will be redefined as category 2 quantity of radioactive materials and category 1 quantity of radioactive materials will be defined as 100 times the category 2 quantity for §336.357.

§336.357, *Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material*

The commission proposes the repeal of and new §336.357 to replace the current section regarding physical protection of radioactive materials with a new section with minor modifications (described in detail in this Section by Section Discussion) that relaxes some of the requirements of current §336.357, authorizes exemptions to these rules for specific types of radioactive waste, and adds rules requiring fingerprinting and an FBI criminal background check for individuals who have unescorted access to category 1 and category 2 quantity of radioactive materials. The current rules regarding physical protection of radioactive material in §336.357 are proposed to be replaced completely because of the numerous changes necessary - due to the minor modifications required by the NRC, incorporation of the fingerprinting and FBI criminal background checks into the rules, and the addition and changing of definitions - would make a piecemeal editing of the old rules cumbersome and inefficient.

Proposed new §336.357(a) will exempt licensees who possess radioactive waste - except waste consisting of discrete sources, ion-exchange resins, or activated material that weighs less than 2,000 kg (4,409 pounds) - that contains category 1 or category 2 quantity of radioactive material from the requirements of §336.357(b) - (w). These licensees will still be required to use continuous barriers, use a locked door or gate with monitored alarm, assess and respond to actual or attempted unauthorized access, and notify the local law enforcement agency (LLEA) and request for an armed response when appropriate.

Proposed new §336.357(b) - (h) will contain the provisions for the background investigation and access authorization program for licensees that allow unescorted access to an aggregated category 1 or category 2 quantity of radioactive material. The requirements for the access authorization program would include the use of a reviewing official, informed consent, personal history disclosure, background investigations, use of implementing procedures, the right to correct and complete information before

an adverse determination, and an annual program review. A limited reinvestigation would be required every 10 years.

Proposed new §336.357(i) - (q) will contain the new provisions for physical protection during use of category 1 and category 2 quantities of radioactive material. Licensees possessing an aggregated category 1 or category 2 quantity of radioactive material will be required to develop and implement a security program. The objective of the security program will be to monitor and, without delay, detect, assess, and respond to any actual or attempted unauthorized access to category 1 or category 2 quantity of radioactive materials. A licensee's security program will need to include a written security plan, implementing procedures, training, use of security zones, coordination with the LLEA, testing and maintenance of security-related equipment, security measures, and a program review. These subsections will also establish special requirements for enhanced security measures for mobile sources and when tamper-indicating and alarm systems must be disabled to permit the maintenance of equipment or replacement of radioactive materials.

Modifications to the current physical protection of radioactive material rules in proposed new §336.357 will include: 1) applying the rules to a licensee only when they possess a category 1 or category 2 quantity of radioactive material and not when they are authorized for such quantities on their radioactive material license; 2) removing the requirement for licensees to submit compliance information; 3) removing the requirement for a licensee to notify the LLEA for work at temporary jobsites; 4) removing several of the LLEA coordination elements, including the requirement to request a written agreement and request notification of any degradation in LLEA response capabilities; 5) requiring that the minimum information to be shared with the LLEA is: A) a description of the facilities and material, B) a description of the security measures being employed by the licensee, and C) a notification that the licensee will request a timely armed response to any theft, sabotage, or diversion of material; 6) revising the testing and maintenance requirement for security-related equipment to be the manufacturer's recommended frequency or annually if the manufacturer does not provide a suggested frequency; 7) removing the requirement to calibrate the equipment; 8) removing the requirement for the licensee to disable the vehicle if a site has health and safety requirements that prevent disabling of vehicles; 9) modifying the reporting requirements to clarify the requirements and provide greater flexibility to the licensee; and 10) requiring a licensee to report suspicious activities.

Proposed new §336.357(r) - (w) will contain security provisions for the transport of category 1 and category 2 quantities of radioactive material. The requirements will be applied in a graded approach with more measures placed on transport of category 1 quantity of radioactive material than on amounts that pose lower risks. The measures will require pre-transfer checks; preplanning and coordination activities; advance notice for category 1 shipments; reporting in the event of a lost or missing shipment or suspicious activities related to the theft or diversion of the shipment; and control, monitoring, and communications during shipments. Road shipments of a category 1 quantity of radioactive material will require licensees to use a carrier that has established movement control centers that maintain periodic position information, use a telemetric position monitoring system, and establish redundant communications that allow the transport to contact the movement control center. Shipments of a category 2 quantity of radioactive material will require the licensees to maintain constant control or surveillance during transit and have the capability for immediate communication to summon appropriate

response or assistance. If a licensee uses a carrier for transport of the material, the licensee will be required to verify that the carrier meets these requirements and has an established package tracking system.

Modifications to the current rules concerning security provisions for the transport of category 1 and category 2 quantities of radioactive material in proposed new §336.357 will include: 1) revising the requirement for license verification before transferring the material to include an emergency option that can be used when the license verification system is nonfunctional and the licensee cannot reach the regulator; 2) exempting the licensee from proposed new §336.357(r) - (w) if the transfer is within the same organization; 3) removing the rule requiring documentation of the license verification if the license verification system is used; 4) removing the provision for the no-later-than arrival time for category 1 shipments; 5) removing some of the specificity on the required coordination with the states through which the radioactive material is being transported; 6) requiring licensees to discuss the State's intention to provide law enforcement escorts and identify safe havens; and 7) removing other elements because they are not necessary and are overly prescriptive.

Proposed new §336.357(x) will provide requirements for the form of the records and proposed new §336.357(y) will provide the retention time for these records. The table of concentration values that will be used to determine if the radioactive material is category 1 or category 2 will be in the proposed new §336.357(z).

§336.739, Volume Reduction

Proposed new §336.739 will establish new restrictions on the disposal of low-level radioactive waste in Texas that was generated outside of Texas or Vermont. These restrictions require that any such waste to be disposed in Texas must have been volume reduced to a certain degree and imposes certain requirements on records retention related to volume reduction.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government. The proposed rules will codify requirements for fingerprinting and an FBI criminal background check for individuals who have unescorted access to certain radioactive material quantities into rule. These requirements are already enforced through a license condition and an NRC order. The proposed rules also provide new restrictions on the disposal of low-level radioactive waste in Texas generated outside of Texas or Vermont. The restrictions would require that any such waste must have been volume reduced. The proposed restrictions are statutorily required and are not expected to result in fiscal implications for the agency or other units of state or local government.

This rulemaking is proposed in order to ensure compatibility with federal regulations promulgated by the NRC. Compatibility with federal regulations is necessary to preserve the status of Texas as an Agreement State under Title 10 CFR Part 150 and under the "Articles of Agreement Between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended." Rules which are designated by NRC as compatibility items must be adopted by an Agreement State within three years of the effective date of the NRC rules, in most cases.

The proposed rulemaking will add 21 definitions to §336.2 and replace the rule regarding physical protection of radioactive materials in §336.357 with a new rule with minor modifications relaxing some of the requirements, authorizing exemptions to these rules for specific types of radioactive waste, and adding rules requiring fingerprinting and an FBI criminal background check for individuals who have unescorted access to quantities of significant concern. Quantities of significant concern will be defined as "category 2 quantity of radioactive material." "Category 1 quantity of radioactive material" will be defined as 100 times the concentration values of category 2 quantity of radioactive materials.

Modifications to the current physical protection of radioactive material rules in §336.357 will include: 1) applying this rule to a licensee only when they possess a category 1 or category 2 quantity of radioactive material instead of, as under the current rule, when the licensee is authorized on their radioactive material license for such quantities regardless if the licensee actually possess a category 1 or category 2 quantity of radioactive materials; 2) removing the requirement for licensees to submit compliance information; 3) removing the requirement for a licensee to notify the LLEA for work at temporary jobsites; 4) removing several of the LLEA coordination elements, including the requirement to request a written agreement and request notification of any degradation in LLEA response capabilities; 5) requiring that the minimum information to be shared with the LLEA is a description of the facilities and radioactive material along with a description of the security measures being employed by the licensee and a notification that the licensee will request a timely armed response to any theft, sabotage, or diversion of radioactive material; 6) revising the testing and maintenance requirement for security-related equipment to be the manufacturer's recommended frequency or annually if the manufacturer does not provide a suggested frequency; 7) removing the requirement to calibrate the equipment; 8) removing the requirement for the licensee to disable the vehicle if a site has health and safety requirements that prevent disabling of vehicles; 9) modifying the reporting to clarify the requirements and provide greater flexibility to the licensee; and 10) requiring a licensee to report suspicious activities.

Modifications to the current rules concerning security provisions for the transport of category 1 and category 2 quantities of radioactive material will include: 1) revising the requirement for license verification before transferring the radioactive material to include an emergency option that can be used when the license verification system is nonfunctional and the licensee cannot reach the regulator; 2) exempting the licensee from §336.357(r) - (w) if the transfer is within the same organization (an example would be a company that has a license in several states); 3) removing the rule requiring documentation of the license verification if the license verification system is used; 4) removing the provision for the no-later-than arrival time for category 1 shipments; 5) removing some of the specificity on the required coordination with the states through which the radioactive material is being transported; 6) requiring licensees to discuss the State's intention to provide law enforcement escorts and identify safe havens; and 7) removing other elements because they are not necessary and are overly prescriptive.

The proposed rulemaking will modify existing agency rules regarding the physical protection of radioactive materials. Proposed new §336.357 will relax some requirements but will also add rules requiring fingerprinting and an FBI criminal background check for individuals who have unescorted access to radioactive material quantities of significant concern (which will be renamed category 2 quantity of radioactive materials). The fingerprint-

ing and the FBI criminal background check are already enforced through a license condition and an NRC order. The rulemaking will codify these requirements into rule; and therefore, no fiscal implications are anticipated for the agency or any other unit of state or local government.

The proposed rulemaking also addresses the volume reduction of low level radioactive waste generated outside of Texas or Vermont that is to be disposed of in Texas. The proposed requirements are the result of the passage of SB 347. These requirements for nonparty waste (waste from outside the Texas Low Level Radioactive Waste Disposal Compact Commission (TLLRWDCC)) would begin September 1, 2015. The license holder for the Compact low level radioactive waste disposal facility (Waste Control Specialist) would only be allowed to accept nonparty waste for disposal if the waste has been volume-reduced and the license holder collects a fee to support the TLLRWDCC. If volume reduction would change the waste classification to greater than class C, volume reduction will not be required. At this time, it is not known how much volume reduced waste would be accepted for disposal or how much associated fee revenue would be collected by Waste Control Specialists. The requirements from SB 347 regarding volume reduction may result in additional disposal costs for out of state licensed entities, but should not result in fiscal implications for any units of state or local government in Texas.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules would be to ensure compatibility with federal regulations promulgated by the NRC and to clarify procedures that ensure that radioactive material is used, stored, and transported safely. The proposed volume reduction requirements would encourage the reservation of waste disposal capacity at the Texas Low-Level Radioactive Waste Disposal Compact disposal site for Texas and Vermont waste. No fiscal implications are anticipated for businesses or individuals as a result of the administration or enforcement of the proposed rules. The proposed rulemaking will modify existing agency rules regarding the physical protection of radioactive materials. Proposed new §336.357 will relax some requirements but will also add rules requiring fingerprinting and an FBI criminal background check for individuals who have unescorted access to radioactive material quantities of significant concern. The fingerprinting and the FBI criminal background check are already enforced through a state of Texas license condition and an NRC order. Volume reduction requirements will only affect the out of state customers (except Vermont) of one Texas business. Out of state waste that has been volume-reduced will be subject to a fee collected by the Texas license holder that would be used to support the TLLRWDCC. It is not known how much fee revenue would be collected or how much volume reduced waste will be received at the disposal site. The volume reduction requirements may result in additional disposal costs for out of state businesses, but any such costs are not possible to estimate at this time.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. The proposed rules would have the same effect on a small business as it does on a large business. The proposed requirements are already enforced through a state of Texas license condition and an NRC order and, therefore, not expected to affect small or micro-busi-

nesses. The rule is necessary for the safe and secure use of radioactive material and in order to be compatible with federal rules. The volume reduction requirements are not expected to affect small or micro-businesses in the state. It is not known if the volume reduction requirements would affect any small or micro-businesses out of state.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are necessary in order to comply with state law and be compatible with federal rules and does not adversely affect small or micro-businesses in a material way for the first five years that the proposed rules are in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act. "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 proposed new rule is not anticipated to 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 because the proposed new rule codifies existing requirements that are already imposed by federal rule, state statute, and state license condition.

Furthermore, the proposed rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed 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) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor adopt a rule solely under the general powers of the agency.

The TRCA, THSC, Chapter 401, authorizes the commission to regulate the disposal of most radioactive material in Texas. THSC, §401.106(a) authorizes the commission to adopt rules to exempt a source of radiation from the licensing requirements of the TRCA if the commission finds that the exemption of the source of radiation will not constitute a significant risk to the public health and safety and the environment. In addition, the state of Texas is an "Agreement State," authorized by the

NRC to administer a radiation control program under the AEA. The proposed rules do not exceed a standard set by federal law. The proposed rulemaking implements an exemption that is consistent with exemptions approved by the NRC for the disposal of radioactive tracers.

The proposed rules do not exceed an express requirement of state law. The TRCA, THSC, Chapter 401 establishes general requirements for the licensing and disposal of radioactive materials. THSC, §401.106 specially authorizes the commission to exempt a source of radiation from the requirements to obtain a license for disposal.

The commission has also determined that the proposed rules do not exceed a requirement of a delegation agreement or contract between the state and an agency of the federal government. The state of Texas has been designated as an "Agreement State" by the NRC under the authority of the AEA. The AEA requires that the NRC find that the state radiation control program is compatible with the NRC's requirements for the regulation of radioactive materials and is adequate to protect health and safety. The commission determined that the proposed rules do not exceed the NRC's requirements nor exceed the requirements for retaining status as an "Agreement State."

The commission also determined that these rules are proposed under specific authority of the TRCA, THSC, Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.106 authorize the commission to adopt rules for the control of sources or radiation and the licensing and exemption of the disposal of radioactive materials.

The commission invites public comment of the draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rules and performed a preliminary assessment of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment is that implementation of the proposed rules would not constitute a taking of real property. The purpose of the proposed rules is to codify federal requirements for increased controls of certain radioactive material, which are already in effect on state licensees by license condition and to impose certain requirements related to Volume Reduction from SB 347.

Consistency with the Coastal Management Program

The commission reviewed this proposed rulemaking action and determined that the proposed rule is neither identified in, nor will it affect, any action/authorization identified in Coastal Coordination Act Implementation Rules in 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP). Therefore, the proposed rulemaking action is not subject to the CMP.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on September 29, 2015, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100

Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Sherry Davis, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2015-012-336-WS. The comment period closes on October 4, 2015. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Bobby Janecka, Radioactive Materials Division, (512) 239-6415.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §336.2

Statutory Authority

The amendment is proposed under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; and THSC, §401.106, which authorizes the commission to adopt rules to exempt a source of radiation from the licensing requirements provided by the Texas Radiation Control Act. The proposed amendment is also authorized by Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state.

The proposed amendment implements THSC, §§401.011, 401.051, 401.057, 401.103, 401.106, and 401.412.

§336.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, or as described in Chapter 3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Additional definitions used only in a certain subchapter will be found in that subchapter.

(1) Absorbed dose--The energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the rad and the gray (Gy).

(2) Accelerator-produced radioactive material--Any material made radioactive by a particle accelerator.

(3) Access control--A system for allowing only approved individuals to have unescorted access to the security zone and for ensuring that all other individuals are subject to escorted access.

(4) ~~(3)~~ Activity--The rate of disintegration (transformation) or decay of radioactive material. The units of activity are the curie (Ci) and the becquerel (Bq).

(5) ~~(4)~~ Adult--An individual 18 or more years of age.

(6) Aggregated--Accessible by the breach of a single physical barrier that allows access to radioactive material in any form, including any devices containing the radioactive material, when the total activity equals or exceeds a category 2 quantity of radioactive material.

(7) ~~(5)~~ Agreement state--Any state with which the United States Nuclear Regulatory Commission (NRC) or the Atomic Energy Commission has entered into an effective agreement under the Atomic Energy Act of 1954, §274b, as amended through October 24, 1992 (Public Law 102-486).

(8) ~~(6)~~ Airborne radioactive material--Any radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

(9) ~~(7)~~ Airborne radioactivity area--A room, enclosure, or area in which airborne radioactive materials, composed wholly or partly of licensed material, exist in concentrations:

(A) in excess of the derived air concentrations (DACs) specified in Table I of §336.359(d) of this title (relating to Appendix B. Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage); or

(B) to a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6% of the ALI or 12 DAC-hours.

(10) ~~(8)~~ Air-purifying respirator--A respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

(11) ~~(9)~~ Annual limit on intake (ALI)--The derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the "reference man" that would result in a committed effective dose equivalent of 5 rems (0.05 sievert) or a committed dose equivalent of 50 rems (0.5 sievert) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table I, Columns 1 and 2 of §336.359(d) of this title (relating to Appendix B. Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage).

(12) Approved individual--An individual whom the licensee has determined to be trustworthy and reliable for unescorted access in accordance with §336.357(b) - (h) of this title (relating to Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material) and who has completed the training required by §336.357(j)(3) of this title.

(13) ~~(10)~~ As low as is reasonably achievable [~~ALARA~~]-Making every reasonable effort to maintain exposures to radiation as far below the dose limits in this chapter as is practical, consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the state of technology, the economics of improvements in

relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of ionizing radiation and licensed radioactive materials in the public interest.

(14) [(11)] Assigned protection factor (APF)--The expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

(15) [(12)] Atmosphere-supplying respirator--A respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators [(SARs)] and self-contained breathing apparatus [(SCBA)] units.

(16) Background investigation--The investigation conducted by a licensee or applicant to support the determination of trustworthiness and reliability.

(17) [(13)] Background radiation--Radiation from cosmic sources; non-technologically enhanced naturally-occurring radioactive material, including radon (except as a decay product of source or special nuclear material) and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include radiation from radioactive materials regulated by the commission, Texas Department of State Health Services, NRC, or an Agreement State.

(18) [(14)] Becquerel (Bq)--See §336.4 of this title (relating to Units of Radioactivity).

(19) [(15)] Bioassay--The determination of kinds, quantities, or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body. For purposes of the rules in this chapter, "radiobioassay" is an equivalent term.

(20) [(16)] Byproduct material--

(A) A radioactive material, other than special nuclear material, that is produced in or made radioactive by exposure to radiation incident to the process of producing or using special nuclear material;

(B) The tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes, and other tailings having similar radiological characteristics. Underground ore bodies depleted by these solution extraction processes do not constitute "byproduct material" within this definition;

(C) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, for use for a commercial, medical, or research activity;

(D) Any material that has been made radioactive by use of a particle accelerator, and is produced, extracted, or converted for use for a commercial, medical, or research activity; and

(E) Any discrete source of naturally occurring radioactive material, other than source material, that is extracted or converted after extraction for use in a commercial, medical, or research activity and that the NRC, in consultation with the Administrator of the United States Environmental Protection Agency (EPA), the United States Secretary of Energy, the United States Secretary of Homeland Security, and

the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security.

(21) [(17)] CFR--Code of Federal Regulations.

(22) Carrier--A person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

(23) Category 1 quantity of radioactive material--A quantity of radioactive material meeting or exceeding the category 1 threshold in accordance with §336.357(z) of this title (relating to Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material). This is determined by calculating the ratio of the total activity of each radionuclide to the category 1 threshold for that radionuclide and adding the ratios together. If the sum is equal to or exceeds 1, the quantity would be considered a category 1 quantity. Category 1 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

(24) Category 2 quantity of radioactive material--A quantity of radioactive material meeting or exceeding the category 2 threshold but less than the category 1 threshold in accordance with §336.357(z) of this title (relating to Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material). This is determined by calculating the ratio of the total activity of each radionuclide to the category 2 threshold for that radionuclide and adding the ratios together. If the sum is equal to or exceeds 1, the quantity would be considered a category 2.

(25) [(18)] Class--A classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for Class D (Days) of less than ten days, for Class W (Weeks) from 10 to 100 days, and for Class Y (Years) of greater than 100 days. For purposes of the rules in this chapter, "lung class" and "inhalation class" are equivalent terms.

(26) [(19)] Collective dose--The sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(27) [(20)] Committed dose equivalent ($H_{T,50}$) (CDE)--The dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

(28) [(21)] Committed effective dose equivalent ($H_{E,50}$) (CEDE)--The sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues.

(29) [(22)] Compact--The Texas Low-Level Radioactive Waste Disposal Compact established under Texas Health and Safety Code, §403.006 and Texas Low-Level Radioactive Waste Disposal Compact Consent Act, Public Law Number 105-236 (1998).

(30) [(23)] Compact waste--Low-level radioactive waste that:

(A) is generated in a host state or a party state; or

(B) is not generated in a host state or a party state, but has been approved for importation to this state by the compact commission under §3.05 of the compact established under Texas Health and Safety Code, §403.006.

(31) [(24)] Compact waste disposal facility--The low-level radioactive waste land disposal facility licensed by the commission un-

der Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) for the disposal of compact waste.

(32) [(25)] Constraint (dose constraint)--A value above which specified licensee actions are required.

(33) [(26)] Critical group--The group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

(34) [(27)] Curie (Ci)--See §336.4 of this title (relating to Units of Radioactivity).

(35) [(28)] Declared pregnant woman--A woman who has voluntarily informed the licensee, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

(36) [(29)] Decommission--To remove (as a facility) safely from service and reduce residual radioactivity to a level that permits:

(A) release of the property for unrestricted use and termination of license; or

(B) release of the property under restricted conditions and termination of the license.

(37) [(30)] Deep-dose equivalent (H_d) (which applies to external whole-body exposure)--The dose equivalent at a tissue depth of one centimeter (1,000 milligrams/square centimeter).

(38) [(31)] Demand respirator--An atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

(39) [(32)] Depleted uranium--The source material uranium in which the isotope uranium-235 is less than 0.711%, by weight, of the total uranium present. Depleted uranium does not include special nuclear material.

(40) [(33)] Derived air concentration (DAC)--The concentration of a given radionuclide in air which, if breathed by the "reference man" for a working year of 2,000 hours under conditions of light work (inhalation rate of 1.2 cubic meters of air/hour), results in an intake of one ALI. DAC values are given in Table I, Column 3, of §336.359(d) of this title (relating to Appendix B. Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage).

(41) [(34)] Derived air concentration-hour (DAC-hour)--The product of the concentration of radioactive material in air (expressed as a fraction or multiple of the derived air concentration for each radionuclide) and the time of exposure to that radionuclide, in hours. A licensee shall take 2,000 DAC-hours to represent one [ALH], equivalent to a committed effective dose equivalent of 5 rems (0.05 sievert).

(42) [(35)] Discrete source--A radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

(43) [(36)] Disposal--With regard to low-level radioactive waste, the isolation or removal of low-level radioactive waste from mankind and mankind's environment without intent to retrieve that low-level radioactive waste later.

(44) [(37)] Disposable respirator--A respirator for which maintenance is not intended and that is designed to be discarded after

excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only SCBA.

(45) [(38)] Distinguishable from background--The detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

(46) Diversion--The unauthorized movement of radioactive material subject to §336.357 of this title (relating to Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material) to a location different from the material's authorized destination inside or outside of the site at which the material is used or stored.

(47) [(39)] Dose--A generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of the rules in this chapter, "radiation dose" is an equivalent term.

(48) [(40)] Dose equivalent (H_T)--The product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert (Sv).

(49) [(41)] Dose limits--The permissible upper bounds of radiation doses established in accordance with the rules in this chapter. For purposes of the rules in this chapter, "limits" is an equivalent term.

(50) [(42)] Dosimetry processor--An individual or organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

(51) [(43)] Effective dose equivalent (H_E)--The sum of the products of the dose equivalent to each organ or tissue (H_T) and the weighting factor (w_T) applicable to each of the body organs or tissues that are irradiated.

(52) [(44)] Embryo/fetus--The developing human organism from conception until the time of birth.

(53) [(45)] Entrance or access point--Any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed radioactive materials. This includes portals of sufficient size to permit human access, irrespective of their intended use.

(54) [(46)] Environmental Radiation and Perpetual Care Account--An account in the general revenue fund established for the purposes specified in the Texas Health and Safety Code, §401.306.

(55) Escorted access--Accompaniment while in a security zone by an approved individual who maintains continuous direct visual surveillance at all times over an individual who is not approved for unescorted access.

(56) [(47)] Exposure--Being exposed to ionizing radiation or to radioactive material.

(57) [(48)] Exposure rate--The exposure per unit of time.

(58) [(49)] External dose--That portion of the dose equivalent received from any source of radiation outside the body.

(59) [(50)] Extremity--Hand, elbow, arm below the elbow, foot, knee, and leg below the knee. The arm above the elbow and the leg above the knee are considered part of the whole body.

(60) [(51)] Federal facility waste--Low-level radioactive waste that is the responsibility of the federal government under the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 United States Code, §2021b - 2021j). Excluded from this definition is low-level radioactive waste that is classified as greater than Class C in §336.362 of this title (relating to Appendix E. Classification and Characteristics of Low-Level Radioactive Waste).

(61) [(52)] Federal facility waste disposal facility--A low-level radioactive waste land disposal facility for the disposal of federal facility waste licensed under Subchapters H and J of this chapter (relating to Licensing Requirement of Near-Surface Land Disposal of Low-Level Radioactive Waste, and Federal Facility Waste Disposal Facility).

(62) [(53)] Filtering facepiece (dust mask)--A negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

(63) Fingerprint Orders--Orders issued by the NRC or the legally binding requirements issued by Agreement States that require fingerprints and criminal history records checks for individuals with unescorted access to category 1 and category 2 quantities of radioactive material or safeguards information-modified handling.

(64) [(54)] Fit factor--A quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

(65) [(55)] Fit test--The use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

(66) [(56)] General license--An authorization granted by an agency under its rules which is effective without the filing of an application with that agency or the issuance of a licensing document to the particular person.

(67) [(57)] Generally applicable environmental radiation standards--Standards issued by the EPA under the authority of the Atomic Energy Act of 1954, as amended through October 4, 1996, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(68) [(58)] Gray (Gy)--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(69) [(59)] Hazardous waste--Hazardous waste as defined in §335.1 of this title (relating to Definitions).

(70) [(60)] Helmet--A rigid respiratory inlet covering that also provides head protection against impact and penetration.

(71) [(61)] High radiation area--An area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 millisievert) in one hour at 30 centimeters from the radiation source or 30 centimeters from any surface that the radiation penetrates.

(72) [(62)] Hood--A respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

(73) [(63)] Host state--A party state in which a compact facility is located or is being developed. The state [State] of Texas is

the host state under the Texas Low-Level Radioactive Waste Disposal Compact, §2.01, established under Texas Health and Safety Code, §403.006.

(74) [(64)] Individual--Any human being.

(75) [(65)] Individual monitoring--The assessment of:

(A) dose equivalent by the use of individual monitoring devices;

(B) committed effective dose equivalent by bioassay or by determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours; or

(C) dose equivalent by the use of survey data.

(76) [(66)] Individual monitoring devices--Devices designed to be worn by a single individual for the assessment of dose equivalent such as film badges, thermoluminescence dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

(77) [(67)] Inhalation class--See "Class."

(78) [(68)] Inspection--An official examination and/or observation including, but not limited to, records, tests, surveys, and monitoring to determine compliance with the Texas Radiation Control Act (TRCA) and rules, orders, and license conditions of the commission.

(79) [(69)] Internal dose--That portion of the dose equivalent received from radioactive material taken into the body.

(80) [(70)] Land disposal facility--The land, buildings and structures, and equipment which are intended to be used for the disposal of low-level radioactive wastes into the subsurface of the land. For purposes of this chapter, a "geologic repository" as defined in 10 CFR §60.2 as amended through October 27, 1988 (53 FR 43421) (relating to Definitions - high-level radioactive wastes in geologic repositories) is not considered a "land disposal facility."

(81) [(71)] Lens dose equivalent (LDE)--The external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm²).

(82) [(72)] License--See "Specific license."

(83) [(73)] Licensed material--Radioactive material received, possessed, used, processed, transferred, or disposed of under a license issued by the commission.

(84) [(74)] Licensee--Any person who holds a license issued by the commission in accordance with the Texas Health and Safety Code, Chapter 401 (Radioactive Materials and Other Sources of Radiation) and the rules in this chapter. For purposes of the rules in this chapter, "radioactive material licensee" is an equivalent term. Unless stated otherwise, "licensee" as used in the rules of this chapter means the holder of a "specific license."

(85) [(75)] Licensing state--Any state with rules equivalent to the Suggested State Regulations for Control of Radiation relating to, and having an effective program for, the regulatory control of naturally occurring or accelerator-produced radioactive material (NARM) and which has been designated as such by the Conference of Radiation Control Program Directors, Inc.

(86) Local law enforcement agency (LLEA)--A public or private organization that has been approved by a federal, state, or local government to carry firearms; make arrests; and is authorized and has the capability to provide an armed response in the jurisdiction where the licensed category 1 or category 2 quantity of radioactive material is used, stored, or transported.

(87) [(76)] Loose-fitting facepiece--A respiratory inlet covering that is designed to form a partial seal with the face.

(88) [(77)] Lost or missing licensed radioactive material--Licensed material whose location is unknown. This definition includes material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

(89) [(78)] Low-level radioactive waste--

(A) Except as provided by subparagraph (B) of this paragraph, low-level radioactive waste means radioactive material that:

(i) is discarded or unwanted and is not exempt by a Texas Department of State Health Services rule adopted under the Texas Health and Safety Code, §401.106;

(ii) is waste, as that term is defined by 10 CFR §61.2; and

(iii) is subject to:

(I) concentration limits established under this chapter; and

(II) disposal criteria established under this chapter.

(B) Low-level radioactive waste does not include:

(i) high-level radioactive waste defined by 10 CFR §60.2;

(ii) spent nuclear fuel as defined by 10 CFR §72.3;

(iii) transuranic waste as defined in this section;

(iv) byproduct material as defined by paragraph (20)(B) - (E) [(46)(B) - (E)] of this section;

(v) naturally occurring radioactive material (NORM) waste; or

(vi) oil and gas NORM waste.

(C) When used in this section, the references to 10 CFR sections mean those CFR sections as they existed on September 1, 1999, as required by Texas Health and Safety Code, §401.005.

(90) [(79)] Lung class--See "Class."

(91) [(80)] Member of the public--Any individual except when that individual is receiving an occupational dose.

(92) [(81)] Minor--An individual less than 18 years of age.

(93) [(82)] Mixed waste--A combination of hazardous waste, as defined in §335.1 of this title (relating to Definitions) and low-level radioactive waste. The term includes compact waste and federal facility waste containing hazardous waste.

(94) Mobile device--A piece of equipment containing licensed radioactive material that is either mounted on wheels or casters, or otherwise equipped for moving without a need for disassembly or dismounting; or designed to be hand carried. Mobile devices do not include stationary equipment installed in a fixed location.

(95) [(83)] Monitoring--The measurement of radiation levels, radioactive material concentrations, surface area activities, or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of the rules in this chapter, "radiation monitoring" and "radiation protection monitoring" are equivalent terms.

(96) Movement control center--An operations center that is remote from transport activity and that maintains position information on the movement of radioactive material, receives reports of attempted attacks or thefts, provides a means for reporting these and other problems to appropriate agencies and can request and coordinate appropriate aid.

(97) [(84)] Nationally tracked source--A sealed source containing a quantity equal to or greater than category [Category] 1 or category [Category] 2 levels of any radioactive material listed in §336.351 of this title (relating to Reports of Transactions Involving Nationally Tracked Sources). In this context a sealed source is defined as radioactive material that is sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the category [Category] 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the category [Category] 2 threshold but less than the category [Category] 1 threshold.

(98) [(85)] Naturally occurring or accelerator-produced radioactive material (NARM)--Any NARM [naturally occurring or accelerator-produced radioactive material] except source material or special nuclear material.

(99) [(86)] Naturally occurring radioactive material (NORM) waste--Solid, liquid, or gaseous material or combination of materials, excluding source material, special nuclear material, and byproduct material, that:

(A) in its natural physical state spontaneously emits radiation;

(B) is discarded or unwanted; and

(C) is not exempt under rules of the Texas Department of State Health Services adopted under Texas Health and Safety Code, §401.106.

(100) [(87)] Near-surface disposal facility--A land disposal facility in which low-level radioactive waste is disposed of in or within the upper 30 meters of the earth's surface.

(101) [(88)] Negative pressure respirator (tight fitting)--A respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

(102) No-later-than arrival time--The date and time that the shipping licensee and receiving licensee have established as the time an investigation will be initiated if the shipment has not arrived at the receiving facility. The no-later-than arrival time may not be more than six hours after the estimated arrival time for shipments of category 2 quantities of radioactive material.

(103) [(89)] Nonstochastic effect--A health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of the rules in this chapter, "deterministic effect" is an equivalent term.

(104) [(90)] Occupational dose--The dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation and/or to radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee or other person. Occupational dose does not include dose received from background radiation, as a patient from

medical practices, from voluntary participation in medical research programs, or as a member of the public.

(105) [(94)] Oil and gas naturally occurring radioactive material (NORM) waste--NORM waste that constitutes, is contained in, or has contaminated oil and gas waste as that term is defined in the Texas Natural Resources Code, §91.1011.

(106) [(92)] On-site--The same or geographically contiguous property that may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way that the property owner controls and to which the public does not have access, is also considered on-site property.

(107) [(93)] Particle accelerator--Any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and discharging the resultant particulate or other associated radiation at energies usually in excess of 1 million electron volts (MeV).

(108) [(94)] Party state--Any state that has become a party to the compact in accordance with Article VII of the Texas Low-Level Radioactive Waste Disposal Compact, established under Texas Health and Safety Code, §403.006.

(109) [(95)] Perpetual care account--The Environmental Radiation and Perpetual Care Account as defined in this section.

(110) [(96)] Personnel monitoring equipment--See "Individual monitoring devices."

(111) [(97)] Planned special exposure--An infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

(112) [(98)] Positive pressure respirator--A respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

(113) [(99)] Powered air-purifying respirator (PAPR)--An air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

(114) [(400)] Pressure demand respirator--A positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

(115) [(401)] Principal activities--Activities authorized by the license which are essential to achieving the purpose(s) for which the license is issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(116) [(402)] Public dose--The dose received by a member of the public from exposure to radiation and/or radioactive material released by a licensee, or to any other source of radiation under the control of the licensee. It does not include occupational dose or doses received from background radiation, as a patient from medical practices, or from voluntary participation in medical research programs.

(117) [(403)] Qualitative fit test (QLFT)--A pass/fail test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

(118) [(404)] Quality factor (Q)--The modifying factor listed in Table I or II of §336.3(c) or (d) of this title (relating to Units

of Radiation Exposure and Dose) that is used to derive dose equivalent from absorbed dose.

(119) [(405)] Quantitative fit test (QNFT)--An assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

(120) [(406)] Quarter (Calendar quarter)--A period of time equal to one-fourth of the year observed by the licensee (approximately 13 consecutive weeks), providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(121) [(407)] Rad--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(122) [(408)] Radiation--Alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. For purposes of the rules in this chapter, "ionizing radiation" is an equivalent term. Radiation, as used in this chapter, does not include non-ionizing radiation, such as radio- or microwaves or visible, infrared, or ultraviolet light.

(123) [(409)] Radiation area--Any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 millisievert) in one hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates.

(124) [(410)] Radiation machine--Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(125) [(411)] Radioactive material--A naturally-occurring or artificially-produced solid, liquid, or gas that emits radiation spontaneously.

(126) [(412)] Radioactive substance--Includes byproduct material, radioactive material, low-level radioactive waste, source material, special nuclear material, source of radiation, and NORM waste, excluding oil and gas NORM waste.

(127) [(413)] Radioactivity--The disintegration of unstable atomic nuclei with the emission of radiation.

(128) [(414)] Radiobioassay--See "Bioassay."

(129) [(415)] Reference man--A hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics shall be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base. A description of "reference man" is contained in the International Commission on Radiological Protection report, ICRP Publication 23, "Report of the Task Group on Reference Man."

(130) [(416)] Rem--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(131) [(417)] Residual radioactivity--Radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of 10 CFR Part 20.

(132) [(418)] Respiratory protection equipment--An apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials. For purposes of the rules in this chapter, "respiratory protective device" is an equivalent term.

(133) [(419)] Restricted area--An area, access to which is limited by the licensee for the purpose of protecting individuals against undue risks from exposure to radiation and radioactive materials. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building shall be set apart as a restricted area.

(134) Reviewing official--The individual who shall make the trustworthiness and reliability determination of an individual to determine whether the individual may have, or continue to have, unescorted access to the category 1 or category 2 quantities of radioactive materials that are possessed by the licensee.

(135) [(420)] Roentgen (R)--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(136) Sabotage--Deliberate damage, with malevolent intent, to a category 1 or category 2 quantity of radioactive material, a device that contains a category 1 or category 2 quantity of radioactive material, or the components of the security system.

(137) Safe haven--A readily recognizable and readily accessible site at which security is present or from which, in the event of an emergency, the transport crew can notify and wait for the local law enforcement authorities.

(138) [(421)] Sanitary sewerage--A system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee.

(139) [(422)] Sealed source--Radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions that are likely to be encountered in normal use and handling.

(140) Security zone--Any temporary or permanent area established by the licensee for the physical protection of category 1 or category 2 quantities of radioactive material.

(141) [(423)] Self-contained breathing apparatus (SCBA)--An atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

(142) [(424)] Shallow-dose equivalent (H_s) (which applies to the external exposure of the skin of the whole body or the skin of an extremity)--The dose equivalent at a tissue depth of 0.007 centimeter (seven milligrams/square centimeter).

(143) [(425)] SI--The abbreviation for the International System of Units.

(144) [(426)] Sievert (Sv)--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(145) [(427)] Site boundary--That line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.

(146) [(428)] Source material--

(A) Uranium or thorium, or any combination thereof, in any physical or chemical form; or

(B) Ores [oəres] that contain, by weight, 0.05% or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.

(147) [(429)] Special form radioactive material--Radioactive material which is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule and which has at least one dimension not less than five millimeters and which satisfies the test requirements of 10 CFR §71.75 as amended through September 28, 1995 (60 FR 50264) (Transportation of License Material).

(148) [(430)] Special nuclear material--

(A) Plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the NRC, under the provisions of the Atomic Energy Act of 1954, §51, as amended through November 2, 1994 (Public Law 103-437), determines to be special nuclear material, but does not include source material; or

(B) any material artificially enriched by any of the foregoing, but does not include source material.

(149) [(431)] Special nuclear material in quantities not sufficient to form a critical mass--Uranium enriched in the isotope 235 in quantities not exceeding 350 grams of contained uranium-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of these in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified in this paragraph for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed 1. For example, the following quantities in combination would not exceed the limitation: (175 grams contained U-235/350 grams) + (50 grams U-233/200 grams) + (50 grams Pu/200 grams) = 1.

(150) [(432)] Specific license--A licensing document issued by an agency upon an application filed under its rules. For purposes of the rules in this chapter, "radioactive material license" is an equivalent term. Unless stated otherwise, "license" as used in this chapter means a "specific license."

(151) [(433)] State--The state [State] of Texas.

(152) [(434)] Stochastic effect--A health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of the rules in this chapter, "probabilistic effect" is an equivalent term.

(153) [(435)] Supplied-air respirator (SAR) or airline respirator--An atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

(154) [(436)] Survey--An evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, and/or presence of radioactive materials or other sources of radiation. When appropriate, this evaluation includes, but is not limited to, physical examination of the location of radioactive material and measurements or calculations of levels of radiation or concentrations or quantities of radioactive material present.

(155) Telemetric position monitoring system--A data transfer system that captures information from instrumentation and/or measuring devices about the location and status of a transport vehicle or package between the departure and destination locations.

(156) [(437)] Termination--As applied to a license, a release by the commission of the obligations and authorizations of the licensee under the terms of the license. It does not relieve a person of duties and responsibilities imposed by law.

(157) [(138)] Tight-fitting facepiece--A respiratory inlet covering that forms a complete seal with the face.

(158) [(139)] Total effective dose equivalent (TEDE)--The sum of the effective dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

(159) [(140)] Total organ dose equivalent (TODE)--The sum of the deep-dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in §336.346(a)(6) of this title (relating to Records of Individual Monitoring Results).

(160) [(141)] Transuranic waste--For the purposes of this chapter, wastes containing alpha emitting transuranic radionuclides with a half-life greater than five years at concentrations greater than 100 nanocuries/gram.

(161) Trustworthiness and reliability--Characteristics of an individual considered dependable in judgment, character, and performance, such that unescorted access to category 1 or category 2 quantities of radioactive material by that individual does not constitute an unreasonable risk to the public health and safety or security. A determination of trustworthiness and reliability for this purpose is based upon the results from a background investigation.

(162) [(142)] Type A quantity (for packaging)--A quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material or A_2 for normal form radioactive material, where A_1 and A_2 are given in or shall be determined by procedures in Appendix A to 10 CFR Part 71 as amended through September 28, 1995 (60 FR 50264) (Packaging and Transportation of Radioactive Material).

(163) [(143)] Type B quantity (for packaging)--A quantity of radioactive material greater than a Type A quantity.

(164) Unescorted access--Solitary access to an aggregated category 1 or category 2 quantity of radioactive material or the devices that contain the material.

(165) [(144)] Unrefined and unprocessed ore--Ore in its natural form before any processing, such as grinding, roasting, beneficiating, or refining.

(166) [(145)] Unrestricted area--Any area that is not a restricted area.

(167) [(146)] User seal check (fit check)--An action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

(168) [(147)] Very high radiation area--An area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose in excess of 500 rads (five grays) in one hour at one meter from a source of radiation or one meter from any surface that the radiation penetrates.

(169) [(148)] Violation--An infringement of any provision of the Texas Radiation Control Act (TRCA) [TRCA] or of any rule, order, or license condition of the commission issued under the TRCA or this chapter.

(170) [(149)] Waste--Low-level radioactive wastes containing source, special nuclear, or byproduct material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in paragraph (20)(B) - (E) [(146)(B) - (E)] of this section.

(171) [(150)] Week--Seven consecutive days starting on Sunday.

(172) [(151)] Weighting factor (w_T) for an organ or tissue (T)--The proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:

Figure: 30 TAC §336.2(172)
[Figure: 30 TAC §336.2(151)]

(173) [(152)] Whole body--For purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

(174) [(153)] Worker--An individual engaged in activities under a license issued by the commission and controlled by a licensee, but does not include the licensee.

(175) [(154)] Working level (WL)--Any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of 1.3×10^5 MeV of potential alpha particle energy. The short-lived radon daughters are: for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212.

(176) [(155)] Working level month (WLM)--An exposure to one working level for 170 hours (2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month).

(177) [(156)] Year--The period of time beginning in January used to determine compliance with the provisions of the rules in this chapter. The licensee shall change the starting date of the year used to determine compliance by the licensee provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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For further information, please call: (512) 239-2141



SUBCHAPTER D. STANDARDS FOR PROTECTION AGAINST RADIATION

30 TAC §336.357

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

Statutory Authority

The repeal is proposed under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the

recovery and processing of source material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; and THSC, §401.106, which authorizes the commission to adopt rules to exempt a source of radiation from the licensing requirements provided by the Texas Radiation Control Act. The proposed repeal is also authorized by Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state.

The proposed repeal implements THSC, §§401.011, 401.051, 401.057, 401.103, 401.104, 401.106, and 401.412.

§336.357. *Increased Controls for Licensees that Possess Sources Containing Radioactive Material Quantities of Concern.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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30 TAC §336.357

Statutory Authority

The new rule is proposed under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; and THSC, §401.106, which authorizes the commission to adopt rules to exempt a source of radiation from the licensing requirements provided by the Texas Radiation Control Act. The proposed new rule is also authorized by Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state.

The proposed new rule implements THSC, §§401.011, 401.057, 401.103, 401.106, and 401.412.

§336.357. *Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material.*

(a) Specific exemption. A licensee that possesses radioactive waste that contains category 1 or category 2 quantities of radioactive material is exempt from the requirements of subsections (b) - (w) of this section. However, any radioactive waste that contains discrete sources,

ion-exchange resins, or activated material that weighs less than 2,000 kilograms (4,409 pounds) is not exempt from the requirements of subsections (b) - (w) of this section. The licensee shall implement the following requirements to secure the radioactive waste:

(1) Use continuous physical barriers that allow access to the radioactive waste only through established access control points;

(2) Use a locked door or gate with monitored alarm at the access control point;

(3) Assess and respond to each actual or attempted unauthorized access to determine whether an actual or attempted theft, sabotage, or diversion occurred; and

(4) Immediately notify the local law enforcement agency (LLEA) and request an armed response from the LLEA upon determination that there was an actual or attempted theft, sabotage, or diversion of the radioactive waste that contains category 1 or category 2 quantities of radioactive material.

(b) Personnel access authorization requirements for category 1 or category 2 quantities of radioactive material.

(1) General.

(A) Each licensee that possesses an aggregated quantity of radioactive material at or above the category 2 threshold shall establish, implement, and maintain its access authorization program in accordance with the requirements of this subsection and subsections (c) - (h) of this section.

(B) An applicant for a new license and each licensee, upon application for modification of its license, that would become newly subject to the requirements of this subsection and subsections (c) - (h) of this section, shall implement the requirements of this subsection and subsections (c) - (h) of this section, as appropriate, before taking possession of an aggregated category 1 or category 2 quantity of radioactive material.

(C) Any licensee that has not previously implemented the Security Orders or been subject to the provisions of this subsection and subsections (c) - (h) of this section shall implement the provisions of this subsection and subsections (c) - (h) of this section before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

(2) General performance objective. The licensee's access authorization program must ensure that the individuals specified in paragraph (3)(A) of this subsection are trustworthy and reliable.

(3) Applicability.

(A) Licensees shall subject the following individuals to an access authorization program:

(i) Any individual whose assigned duties require unescorted access to category 1 or category 2 quantities of radioactive material or to any device that contains the radioactive material; and

(ii) Reviewing officials.

(B) Licensees need not subject the categories of individuals listed in subsection (f)(1) of this section to the investigation elements of the access authorization program.

(C) Licensees shall approve for unescorted access to category 1 or category 2 quantities of radioactive material only those individuals with job duties that require unescorted access to category 1 or category 2 quantities of radioactive material.

(D) Licensees may include individuals needing access to safeguards information-modified handling under 10 Code of Federal

Regulations (CFR) Part 73, in the access authorization program under this subsection and subsections (c) - (h) of this section.

(c) Access authorization program requirements.

(1) Granting unescorted access authorization.

(A) Licensees shall implement the requirements of subsection (b) of this section, this subsection, and subsections (d) - (h) of this section for granting initial or reinstated unescorted access authorization.

(B) Individuals determined to be trustworthy and reliable shall also complete the security training required by subsection (j)(3) of this section before being allowed unescorted access to category 1 or category 2 quantities of radioactive material.

(2) Reviewing officials.

(A) Reviewing officials are the only individuals who may make trustworthiness and reliability determinations that allow individuals to have unescorted access to category 1 or category 2 quantities of radioactive materials possessed by the licensee.

(B) Each licensee shall name one or more individuals to be reviewing officials. After completing the background investigation on the reviewing official, the licensee shall provide under oath or affirmation, a certification that the reviewing official is deemed trustworthy and reliable by the licensee. The fingerprints of the named reviewing official must be taken by a law enforcement agency, Federal or State agencies that provide fingerprinting services to the public, or commercial fingerprinting services authorized by a State to take fingerprints. The licensee shall recertify that the reviewing official is deemed trustworthy and reliable every 10 years in accordance with subsection (d)(2) of this section.

(C) Reviewing officials must be permitted to have unescorted access to category 1 or category 2 quantities of radioactive materials or access to safeguards information or safeguards information-modified handling, if the licensee possesses safeguards information or safeguards information-modified handling.

(D) Reviewing officials cannot approve other individuals to act as reviewing officials.

(E) A reviewing official does not need to undergo a new background investigation before being named by the licensee as the reviewing official if:

(i) The individual has undergone a background investigation that included fingerprinting and a Federal Bureau of Investigations (FBI) criminal history records check and has been determined to be trustworthy and reliable by the licensee; or

(ii) The individual is subject to a category listed in subsection (f) of this section.

(3) Informed consent.

(A) Licensees may not initiate a background investigation without the informed and signed consent of the subject individual. This consent must include authorization to share personal information with other individuals or organizations as necessary to complete the background investigation. Before a final adverse determination, the licensee shall provide the individual with an opportunity to correct any inaccurate or incomplete information that is found during the background investigation. Licensees do not need to obtain signed consent from those individuals that meet the requirements of subsection (d)(2) of this section. A signed consent must be obtained prior to any reinvestigation.

(B) The subject individual may withdraw his or her consent at any time. Licensees shall inform the individual that:

(i) If an individual withdraws his or her consent, the licensee may not initiate any elements of the background investigation that were not in progress at the time the individual withdrew his or her consent; and

(ii) The withdrawal of consent for the background investigation is sufficient cause for denial or termination of unescorted access authorization.

(4) Personal history disclosure. Any individual who is applying for unescorted access authorization shall disclose the personal history information that is required by the licensee's access authorization program for the reviewing official to make a determination of the individual's trustworthiness and reliability. Refusal to provide, or the falsification of, any personal history information required by subsection (b) of this section, this subsection, and subsections (d) - (h) of this section is sufficient cause for denial or termination of unescorted access.

(5) Determination basis.

(A) The reviewing official shall determine whether to permit, deny, unfavorably terminate, maintain, or administratively withdraw an individual's unescorted access authorization based on an evaluation of all of the information collected to meet the requirements of subsection (b) of this section, this subsection, and subsections (d) - (h) of this section.

(B) The reviewing official may not permit any individual to have unescorted access until the reviewing official has evaluated all of the information collected to meet the requirements of subsection (b) of this section, this subsection, and subsections (d) - (h) of this section and determined that the individual is trustworthy and reliable. The reviewing official may deny unescorted access to any individual based on information obtained at any time during the background investigation.

(C) The licensee shall document the basis for concluding whether or not there is reasonable assurance that an individual is trustworthy and reliable.

(D) The reviewing official may terminate or administratively withdraw an individual's unescorted access authorization based on information obtained after the background investigation has been completed and the individual granted unescorted access authorization.

(E) Licensees shall maintain a list of persons currently approved for unescorted access authorization. When a licensee determines that a person no longer requires unescorted access or meets the access authorization requirements, the licensee shall remove the person from the approved list as soon as possible, but no-later-than seven working days, and take prompt measures to ensure that the individual is unable to have unescorted access to the material.

(6) Procedures. Licensees shall develop, implement, and maintain written procedures for implementing the access authorization program. The procedures must include provisions for the notification of individuals who are denied unescorted access. The procedures must include provisions for the review, at the request of the affected individual, of a denial or termination of unescorted access authorization. The procedures must contain a provision to ensure that the individual is informed of the grounds for the denial or termination of unescorted access authorization and allow the individual an opportunity to provide additional relevant information.

(7) Right to correct and complete information.

(A) Prior to any final adverse determination, licensees shall provide each individual subject to subsection (b) of this section, this subsection, and subsections (d) - (h) of this section with the right to complete, correct, and explain information obtained as a result of the licensee's background investigation. Confirmation of receipt by the individual of this notification must be maintained by the licensee for a period of one year from the date of the notification.

(B) If, after reviewing his or her criminal history record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, update, or explain anything in the record, the individual may initiate challenge procedures. These procedures include direct application by the individual challenging the record to the law enforcement agency that contributed the questioned information or a direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, WV 26306, as set forth in 28 CFR §§16.30 - 16.34. In the latter case, the FBI will forward the challenge to the agency that submitted the data, and will request that the agency verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division will make any changes necessary in accordance with the information supplied by that agency. Licensees must provide at least 10 days for an individual to initiate action to challenge the results of an FBI criminal history records check after the record is made available for his or her review. The licensee may make a final adverse determination based upon the criminal history records only after receipt of the FBI's confirmation or correction of the record.

(8) Records.

(A) The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

(B) The licensee shall retain a copy of the current access authorization program procedures as a record for three years after the procedure is no longer needed. If any portion of the procedure is superseded, the licensee shall retain the superseded material for three years after the record is superseded.

(C) The licensee shall retain the list of persons approved for unescorted access authorization for three years after the list is superseded or replaced.

(d) Background investigations.

(1) Initial investigation. Before allowing an individual unescorted access to category 1 or category 2 quantities of radioactive material or to the devices that contain the material, licensees shall complete a background investigation of the individual seeking unescorted access authorization. The scope of the investigation must encompass at least the seven years preceding the date of the background investigation or since the individual's eighteenth birthday, whichever is shorter. The background investigation must include at a minimum:

(A) Fingerprinting and an FBI identification and criminal history records check in accordance with subsection (e) of this section;

(B) Verification of true identity. Licensees shall verify the true identity of the individual applying for unescorted access authorization to ensure that the applicant is who he or she claims to be. A licensee shall review official identification documents (e.g., driver's license; passport; government identification; certificate of birth issued by the state, province, or country of birth) and compare the documents

to personal information data provided by the individual to identify any discrepancy in the information. Licensees shall document the type, expiration, and identification number of the identification document, or maintain a photocopy of identifying documents on file in accordance with subsection (g) of this section. Licensees shall certify in writing that the identification was properly reviewed and shall maintain the certification and all related documents for review upon inspection;

(C) Employment history verification. Licensees shall complete an employment history verification, including military history. Licensees shall verify the individual's employment with each previous employer for the most recent seven years before the date of application;

(D) Verification of education. Licensees shall verify the individual's education during the claimed period;

(E) Character and reputation determination. Licensees shall complete reference checks to determine the character and reputation of the individual who has applied for unescorted access authorization. Unless other references are not available, reference checks may not be conducted with any person who is known to be a close member of the individual's family, including but not limited to the individual's spouse, parents, siblings, or children, or any individual who resides in the individual's permanent household. Reference checks under subsections (b) and (c) of this section, this subsection, and subsections (e) - (h) of this section must be limited to whether the individual has been and continues to be trustworthy and reliable;

(F) The licensee shall also, to the extent possible, obtain independent information to corroborate the information provided by the individual (e.g., seek references not supplied by the individual); and

(G) If a previous employer, educational institution, or any other entity with which the individual claims to have been engaged fails to provide information or indicates an inability or unwillingness to provide information within a time frame deemed appropriate by the licensee, but at least after 10 business days of the request or if the licensee is unable to reach the entity, the licensee shall document the refusal, unwillingness, or inability in the record of investigation and attempt to obtain the information from an alternate source.

(2) Grandfathering.

(A) Individuals who have been determined to be trustworthy and reliable for unescorted access to category 1 or category 2 quantities of radioactive material under the Fingerprint Orders may continue to have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. These individuals shall be subject to the reinvestigation requirement.

(B) Individuals who have been determined to be trustworthy and reliable under the provisions of 10 CFR Part 73 or the Security Orders for access to safeguards information, safeguards information-modified handling, or risk-significant material may have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. The licensee shall document that the individual was determined to be trustworthy and reliable under the provisions of 10 CFR Part 73 or a Security Order. Security Order, in this context, refers to any order that was issued by the United States Nuclear Regulatory Commission (NRC) that required fingerprints and an FBI criminal history records check for access to safeguards information, safeguards information-modified handling, or risk significant material such as special nuclear material or large quantities of uranium hexafluoride. These individuals shall be subject to the reinvestigation requirement.

(3) Reinvestigations. Licensees shall conduct a reinvestigation every 10 years for any individual with unescorted access to category 1 or category 2 quantities of radioactive material. The reinvestigation shall consist of fingerprinting and an FBI identification and criminal history records check in accordance with subsection (e) of this section. The reinvestigations must be completed within 10 years of the date on which these elements were last completed.

(e) Requirements for criminal history records checks of individuals granted unescorted access to category 1 or category 2 quantities of radioactive material.

(1) General performance objective and requirements.

(A) Except for those individuals listed in subsection (f) of this section and those individuals grandfathered under subsection (d)(2) of this section, each licensee subject to the provisions of subsections (b) - (d) of this section, this subsection, and subsections (f) - (h) of this section shall fingerprint each individual who is to be permitted unescorted access to category 1 or category 2 quantities of radioactive material. Licensees shall transmit all collected fingerprints to the NRC for transmission to the FBI. The licensee shall use the information received from the FBI as part of the required background investigation to determine whether to grant or deny further unescorted access to category 1 or category 2 quantities of radioactive materials for that individual.

(B) The licensee shall notify each affected individual that his or her fingerprints will be used to secure a review of his or her criminal history record and shall inform him or her of the procedures for revising the record or adding explanations to the record.

(C) Fingerprinting is not required if a licensee is reinstating an individual's unescorted access authorization to category 1 or category 2 quantities of radioactive materials if:

(i) The individual returns to the same facility that granted unescorted access authorization within 365 days of the termination of his or her unescorted access authorization; and

(ii) The previous access was terminated under favorable conditions.

(D) Fingerprints do not need to be taken if an individual who is an employee of a licensee, contractor, manufacturer, or supplier has been granted unescorted access to category 1 or category 2 quantities of radioactive material, access to safeguards information, or safeguards information-modified handling by another licensee, based upon a background investigation conducted under this section, the Fingerprint Orders, or 10 CFR Part 73. An existing criminal history records check file may be transferred to the licensee asked to grant unescorted access in accordance with the provisions of subsection (g)(3) of this section.

(E) Licensees shall use the information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access authorization to category 1 or category 2 quantities of radioactive materials, access to safeguards information, or safeguards information-modified handling.

(2) Prohibitions.

(A) Licensees may not base a final determination to deny an individual unescorted access authorization to category 1 or category 2 quantities of radioactive material solely on the basis of information received from the FBI involving:

(i) An arrest more than one year old for which there is no information of the disposition of the case; or

(ii) An arrest that resulted in dismissal of the charge or an acquittal.

(B) Licensees may not use information received from a criminal history records check obtained under subsections (b) - (d) of this section, this subsection, and subsections (f) - (h) of this section in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States nor shall licensees use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, gender, or age.

(3) Procedures for processing of fingerprint checks.

(A) For the purpose of complying with subsections (b) - (d) of this section, this subsection, and subsections (f) - (h) of this section, licensees shall use an appropriate method listed in 10 CFR §37.7 to submit to the United States Nuclear Regulatory Commission, Director, Division of Facilities and Security, 11545 Rockville Pike, ATTN: Criminal History Program/Mail Stop TWB-05 B32M, Rockville, Maryland 20852, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRC000Z), electronic fingerprint scan or, where practicable, other fingerprint record for each individual requiring unescorted access to category 1 or category 2 quantities of radioactive material. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; by calling (630) 829-9565; or by e-mail to FORMS.Resource@nrc.gov. Guidance on submitting electronic fingerprints can be found at <http://www.nrc.gov/site-help/e-submittals.html>.

(B) Fees for the processing of fingerprint checks are due upon application. Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." (For guidance on making electronic payments, contact the Security Branch, Division of Facilities and Security at (301) 492-3531.) Combined payment for multiple applications is acceptable. The NRC publishes the amount of the fingerprint check application fee on the NRC's public website. (To find the current fee amount, go to the Electronic Submittals page at <http://www.nrc.gov/site-help/e-submittals.html> and see the link for the Criminal History under Electronic Submission Systems.)

(C) The NRC will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history records checks.

(f) Relief from fingerprinting, identification, and criminal history records checks and other elements of background investigations for designated categories of individuals permitted unescorted access to certain radioactive materials.

(1) Fingerprinting, and the identification and criminal history records checks required by §149 of the Atomic Energy Act of 1954, as amended, and other elements of the background investigation, are not required for the following individuals prior to granting unescorted access to category 1 or category 2 quantities of radioactive materials:

(A) An employee of the NRC or of the Executive Branch of the United States (U.S.) Government who has undergone fingerprinting for a prior U.S. Government criminal history records check;

(B) A Member of Congress;

(C) An employee of a member of Congress or Congressional committee who has undergone fingerprinting for a prior U.S. Government criminal history records check;

(D) The Governor of a State or his or her designated State employee representative;

(E) Federal, State, or local law enforcement personnel;

(F) State Radiation Control Program Directors and State Homeland Security Advisors or their designated State employee representatives;

(G) Agreement State employees conducting security inspections on behalf of the NRC under an agreement executed under §274.i. of the Atomic Energy Act;

(H) Representatives of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who have been certified by the NRC;

(I) Emergency response personnel who are responding to an emergency;

(J) Commercial vehicle drivers for road shipments of category 1 and category 2 quantities of radioactive material;

(K) Package handlers at transportation facilities such as freight terminals and railroad yards;

(L) Any individual who has an active federal security clearance, provided that he or she makes available the appropriate documentation. Written confirmation from the agency/employer that granted the federal security clearance or reviewed the criminal history records check must be provided to the licensee. The licensee shall retain this documentation for a period of three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material; and

(M) Any individual employed by a service provider licensee for which the service provider licensee has conducted the background investigation for the individual and approved the individual for unescorted access to category 1 or category 2 quantities of radioactive material. Written verification from the service provider must be provided to the licensee. The licensee shall retain the documentation for a period of three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

(2) Fingerprinting, and the identification and criminal history records checks required by §149 of the Atomic Energy Act of 1954, as amended, are not required for an individual who has had a favorably adjudicated U.S. Government criminal history records check within the last five years, under a comparable U.S. Government program involving fingerprinting and an FBI identification and criminal history records check provided that he or she makes available the appropriate documentation. Written confirmation from the agency/employer that reviewed the criminal history records check must be provided to the licensee. The licensee shall retain this documentation for a period of three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material. These programs include, but are not limited to:

(A) National Agency Check;

(B) Transportation Worker Identification Credentials under 49 CFR Part 1572;

(C) Bureau of Alcohol, Tobacco, Firearms, and Explosives background check and clearances under 27 CFR Part 555;

(D) Health and Human Services security risk assessments for possession and use of select agents and toxins under 42 CFR Part 73;

(E) Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license under 49 CFR Part 1572; and

(F) Customs and Border Protection's Free and Secure Trade Program.

(g) Protection of information.

(1) Each licensee who obtains background information on an individual under subsections (b) - (f) of this section, this subsection, and subsection (h) of this section shall establish and maintain a system of files and written procedures for protection of the records and the personal information from unauthorized disclosure.

(2) The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his or her representative, or to those who have a need to have access to the information in performing assigned duties in the process of granting or denying unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling. No individual authorized to have access to the information may disseminate the information to any other individual who does not have a need to know.

(3) The personal information obtained on an individual from a background investigation may be provided to another licensee:

(A) Upon the individual's written request to the licensee holding the data to disseminate the information contained in his or her file; and

(B) The recipient licensee verifies information such as name, date of birth, social security number, gender, and other applicable physical characteristics.

(4) The licensee shall make background investigation records obtained under subsections (b) - (f) of this section, this subsection, and subsection (h) of this section available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

(5) The licensee shall retain all fingerprint and criminal history records (including data indicating no record) received from the FBI or a copy of these records if the individual's file has been transferred on an individual for three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

(h) Access authorization program review.

(1) Each licensee shall be responsible for the continuing effectiveness of the access authorization program. Each licensee shall ensure that access authorization programs are reviewed to confirm compliance with the requirements of subsections (b) - (g) of this section and this subsection and that comprehensive actions are taken to correct any noncompliance identified. The review program shall evaluate all program performance objectives and requirements. Each licensee shall periodically (at least annually) review the access authorization program content and implementation.

(2) The results of the reviews, along with any recommendations, must be documented. Each review report must identify conditions that are adverse to the proper performance of the access authorization program, the cause of the condition(s), and, when appropriate, recommend corrective actions, and corrective actions taken. The licensee shall review the findings and take any additional corrective

actions necessary to preclude repetition of the condition, including re-assessment of the deficient areas where indicated.

(3) Review records must be maintained for three years.

(i) Security program.

(1) Applicability.

(A) Each licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material shall establish, implement, and maintain a security program in accordance with the requirements of this subsection and subsections (j) - (q) of this section.

(B) An applicant for a new license, and each licensee that would become newly subject to the requirements of this subsection and subsections (j) - (q) of this section upon application for modification of its license, shall implement the requirements of this subsection and subsections (j) - (q) of this section, as appropriate, before taking possession of an aggregated category 1 or category 2 quantity of radioactive material.

(C) Any licensee that has not previously implemented the Security Orders or been subject to the provisions of this subsection and subsections (j) - (q) of this section shall provide written notification to the NRC regional office specified in 10 CFR §30.6 at least 90 days before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

(2) General performance objective. Each licensee shall establish, implement, and maintain a security program that is designed to monitor and, without delay, detect, assess, and respond to an actual or attempted unauthorized access to category 1 or category 2 quantities of radioactive material.

(3) Program features. Each licensee's security program must include the program features, as appropriate, described in subsections (j) - (p) of this section.

(j) General security program requirements.

(1) Security plan.

(A) Each licensee identified in subsection (i)(1) of this section shall develop a written security plan specific to its facilities and operations. The purpose of the security plan is to establish the licensee's overall security strategy to ensure the integrated and effective functioning of the security program required by this subsection. The security plan must, at a minimum:

(i) Describe the measures and strategies used to implement the requirements of this subsection; and

(ii) Identify the security resources, equipment, and technology used to satisfy the requirements of this subsection.

(B) The security plan must be reviewed and approved by the individual with overall responsibility for the security program.

(C) A licensee shall revise its security plan as necessary to ensure the effective implementation of the executive director's requirements. The licensee shall ensure that:

(i) The revision has been reviewed and approved by the individual with overall responsibility for the security program; and

(ii) The affected individuals are instructed on the revised plan before the changes are implemented.

(D) The licensee shall retain a copy of the current security plan as a record for three years after the security plan is no longer required. If any portion of the plan is superseded, the licensee shall

retain the superseded material for three years after the record is superseded.

(2) Implementing procedures.

(A) The licensee shall develop and maintain written procedures that document how the requirements of subsection (i) of this section, this subsection, and subsections (k) - (q) of this section and the security plan will be met.

(B) The implementing procedures and revisions to these procedures must be approved in writing by the individual with overall responsibility for the security program.

(C) The licensee shall retain a copy of the current procedure as a record for three years after the procedure is no longer needed. Superseded portions of the procedure must be retained for three years after the record is superseded.

(3) Training.

(A) Each licensee shall conduct training to ensure that those individuals implementing the security program possess and maintain the knowledge, skills, and abilities to carry out their assigned duties and responsibilities effectively. The training must include instruction in:

(i) The licensee's security program and procedures to secure category 1 or category 2 quantities of radioactive material and the purposes and functions of the security measures employed;

(ii) The responsibility to report promptly to the licensee any condition that causes or may cause a violation of the requirements of the commission, the NRC, or any Agreement State;

(iii) The responsibility of the licensee to report promptly to the LLEA and licensee any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material; and

(iv) The appropriate response to security alarms.

(B) In determining those individuals who shall be trained on the security program, the licensee shall consider each individual's assigned activities during authorized use and response to potential situations involving actual or attempted theft, diversion, or sabotage of category 1 or category 2 quantities of radioactive material. The extent of the training must be commensurate with the individual's potential involvement in the security of category 1 or category 2 quantities of radioactive material.

(C) Refresher training must be provided at a frequency not to exceed 12 months and when significant changes have been made to the security program. This training must include:

(i) Review of the training requirements of this paragraph and any changes made to the security program since the last training;

(ii) Reports on any relevant security issues, problems, and lessons learned;

(iii) Relevant results of NRC inspections; and

(iv) Relevant results of the licensee's program review and testing and maintenance.

(D) The licensee shall maintain records of the initial and refresher training for three years from the date of the training. The training records must include dates of the training, topics covered, a list of licensee personnel in attendance, and related information.

(4) Protection of information.

(A) Licensees authorized to possess category 1 or category 2 quantities of radioactive material shall limit access to and unauthorized disclosure of their security plan, implementing procedures, and the list of individuals that have been approved for unescorted access.

(B) Efforts to limit access shall include the development, implementation, and maintenance of written policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, the security plan and implementing procedures.

(C) Before granting an individual access to the security plan or implementing procedures, licensees shall:

(i) Evaluate an individual's need to know the security plan or implementing procedures; and

(ii) If the individual has not been authorized for unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling, the licensee must complete a background investigation to determine the individual's trustworthiness and reliability. A trustworthiness and reliability determination shall be conducted by the reviewing official and shall include the background investigation elements contained in subsection (d)(1)(B) - (G) of this section.

(D) Licensees need not subject the following individuals to the background investigation elements for protection of information:

(i) The categories of individuals listed in subsection (f)(1) of this section; or

(ii) Security service provider employees, provided written verification that the employee has been determined to be trustworthy and reliable, by the required background investigation in subsection (d)(1)(B) - (G) of this section, has been provided by the security service provider.

(E) The licensee shall document the basis for concluding that an individual is trustworthy and reliable and should be granted access to the security plan or implementing procedures.

(F) Licensees shall maintain a list of persons currently approved for access to the security plan or implementing procedures. When a licensee determines that a person no longer needs access to the security plan or implementing procedures or no longer meets the access authorization requirements for access to the information, the licensee shall remove the person from the approved list as soon as possible, but no-later-than seven working days, and take prompt measures to ensure that the individual is unable to obtain the security plan or implementing procedures.

(G) When not in use, the licensee shall store its security plan and implementing procedures in a manner to prevent unauthorized access. Information stored in non-removable electronic form must be password protected.

(H) The licensee shall retain as a record for three years after the document is no longer needed:

(i) A copy of the information protection procedures; and

(ii) The list of individuals approved for access to the security plan or implementing procedures.

(k) LLEA coordination.

(1) A licensee subject to subsections (i) and (j) of this section, this subsection, and subsections (l) - (q) of this section shall coordinate,

to the extent practicable, with an LLEA for responding to threats to the licensee's facility, including any necessary armed response. The information provided to the LLEA must include:

(A) A description of the facilities and the category 1 and category 2 quantities of radioactive materials along with a description of the licensee's security measures that have been implemented to comply with subsections (i) and (j) of this section, this subsection, and subsections (l) - (q) of this section; and

(B) A notification that the licensee will request a timely armed response by the LLEA to any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of material.

(2) The licensee shall notify the executive director within three business days if:

(A) The LLEA has not responded to the request for coordination within 60 days of the coordination request; or

(B) The LLEA notifies the licensee that the LLEA does not plan to participate in coordination activities.

(3) The licensee shall document its efforts to coordinate with the LLEA. The documentation must be kept for three years.

(4) The licensee shall coordinate with the LLEA at least every 12 months, or when changes to the facility design or operation adversely affect the potential vulnerability of the licensee's material to theft, sabotage, or diversion.

(l) Security zones.

(1) Licensees shall ensure that all aggregated category 1 and category 2 quantities of radioactive material are used or stored within licensee established security zones. Security zones may be permanent or temporary.

(2) Temporary security zones must be established as necessary to meet the licensee's transitory or intermittent business activities, such as periods of maintenance, source delivery, and source replacement.

(3) Security zones must, at a minimum, allow unescorted access only to approved individuals through:

(A) Isolation of category 1 and category 2 quantities of radioactive materials by the use of continuous physical barriers that allow access to the security zone only through established access control points. A physical barrier is a natural or man-made structure or formation sufficient for the isolation of the category 1 or category 2 quantities of radioactive material within a security zone; or

(B) Direct control of the security zone by approved individuals at all times; or

(C) A combination of continuous physical barriers and direct control.

(4) For category 1 quantities of radioactive material during periods of maintenance, source receipt, preparation for shipment, installation, or source removal or exchange, the licensee shall, at a minimum, provide sufficient individuals approved for unescorted access to maintain continuous surveillance of sources in temporary security zones and in any security zone in which physical barriers or intrusion detection systems have been disabled to allow such activities.

(5) Individuals not approved for unescorted access to category 1 or category 2 quantities of radioactive material must be escorted by an approved individual when in a security zone.

(m) Monitoring, detection, and assessment.

(1) Monitoring and detection.

(A) Licensees shall establish and maintain the capability to continuously monitor and detect without delay all unauthorized entries into its security zones. Licensees shall provide the means to maintain continuous monitoring and detection capability in the event of a loss of the primary power source or provide for an alarm and response in the event of a loss of the capability to continuously monitor and detect unauthorized entries.

(B) Monitoring and detection must be performed by:

(i) A monitored intrusion detection system that is linked to an onsite or offsite central monitoring facility;

(ii) Electronic devices for intrusion detection alarms that will alert nearby facility personnel;

(iii) A monitored video surveillance system;

(iv) Direct visual surveillance by approved individuals located within the security zone; or

(v) Direct visual surveillance by a licensee designated individual located outside the security zone.

(C) A licensee subject to subsections (i) - (l) of this section, this subsection, and subsections (n) - (q) of this section shall also have a means to detect unauthorized removal of the radioactive material from the security zone. This detection capability must provide:

(i) For category 1 quantities of radioactive material, immediate detection of any attempted unauthorized removal of the radioactive material from the security zone. Such immediate detection capability must be provided by:

(I) Electronic sensors linked to an alarm;

(II) Continuous monitored video surveillance;

or

(III) Direct visual surveillance.

(ii) For category 2 quantities of radioactive material, weekly verification through physical checks, tamper indicating devices, use, or other means to ensure that the radioactive material is present.

(2) Assessment. Licensees shall immediately assess each actual or attempted unauthorized entry into the security zone to determine whether the unauthorized access was an actual or attempted theft, sabotage, or diversion.

(3) Personnel communications and data transmission. For personnel and automated or electronic systems supporting the licensee's monitoring, detection, and assessment systems, licensees shall:

(A) Maintain continuous capability for personnel communication and electronic data transmission and processing among site security systems; and

(B) Provide an alternative communication capability for personnel, and an alternative data transmission and processing capability, in the event of a loss of the primary means of communication or data transmission and processing. Alternative communications and data transmission systems may not be subject to the same failure modes as the primary systems.

(4) Response. Licensees shall immediately respond to any actual or attempted unauthorized access to the security zones, or actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material at licensee facilities or temporary job

sites. For any unauthorized access involving an actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material, the licensee's response shall include requesting, without delay, an armed response from the LLEA.

(n) Maintenance and testing.

(1) Each licensee subject to subsections (i) - (m) of this section, this subsection, and subsections (o) - (q) of this section shall implement a maintenance and testing program to ensure that intrusion alarms, associated communication systems, and other physical components of the systems used to secure or detect unauthorized access to radioactive material are maintained in operable condition and capable of performing their intended function when needed. The equipment relied on to meet the security requirements of this section must be inspected and tested for operability and performance at the manufacturer's suggested frequency. If there is no manufacturer's suggested frequency, the testing must be performed at least annually, not to exceed 12 months.

(2) The licensee shall maintain records on the maintenance and testing activities for three years.

(o) Requirements for mobile devices. Each licensee that possesses mobile devices containing category 1 or category 2 quantities of radioactive material must:

(1) Have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee; and

(2) For devices in or on a vehicle or trailer, unless the health and safety requirements for a site prohibit the disabling of the vehicle, the licensee shall utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee.

(3) Licensees shall not rely on the removal of an ignition key to meet this requirement.

(p) Security program review.

(1) Each licensee shall be responsible for the continuing effectiveness of the security program. Each licensee shall ensure that the security program is reviewed to confirm compliance with the requirements of subsections (i) - (o) of this section, this subsection, and subsection (q) of this section and that comprehensive actions are taken to correct any noncompliance that is identified. The review must include the radioactive material security program content and implementation. Each licensee shall periodically (at least annually) review the security program content and implementation.

(2) The results of the review, along with any recommendations, must be documented. Each review report must identify conditions that are adverse to the proper performance of the security program, the cause of the condition(s), and, when appropriate, recommend corrective actions, and corrective actions taken. The licensee shall review the findings and take any additional corrective actions necessary to preclude repetition of the condition, including reassessment of the deficient areas where indicated.

(3) The licensee shall maintain the review documentation for three years.

(q) Reporting of events.

(1) The licensee shall immediately notify the LLEA after determining that an unauthorized entry resulted in an actual or attempted theft, sabotage, or diversion of a category 1 or category 2 quantity of radioactive material. As soon as possible after initiating a response, but not at the expense of causing delay or interfering with the LLEA response to the event, the licensee shall notify the Office

of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 and the NRC's Operations Center at (301) 816-5100. In no case shall the notification to the commission or the NRC be later than four hours after the discovery of any attempted or actual theft, sabotage, or diversion.

(2) The licensee shall assess any suspicious activity related to possible theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material and notify the LLEA as appropriate. As soon as possible but not later than four hours after notifying the LLEA, the licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 and the NRC's Operations Center at (301) 816-5100.

(3) The initial telephonic notification required by paragraph (1) of this subsection must be followed, within a period of 30 days, by a written report submitted to the executive director and the NRC by an appropriate method listed in 10 CFR §37.7. The report must include sufficient information for NRC analysis and evaluation, including identification of any necessary corrective actions to prevent future instances.

(r) Additional requirements for transfer of category 1 and category 2 quantities of radioactive material. A licensee transferring a category 1 or category 2 quantity of radioactive material to a licensee of the commission, the NRC, or an Agreement State shall meet the license verification provisions listed in this subsection instead of those listed in §336.331(d) of this title (relating to Transfer of Radioactive Material):

(1) Any licensee transferring category 1 quantities of radioactive material to a licensee of the commission, the NRC, or an Agreement State, prior to conducting such transfer, shall verify with the NRC's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred and that the licensee is authorized to receive radioactive material at the location requested for delivery. If the verification is conducted by contacting the license issuing authority, the transferor shall document the verification. For transfers within the same organization, the licensee does not need to verify the transfer.

(2) Any licensee transferring category 2 quantities of radioactive material to a licensee of the commission, the NRC, or an Agreement State, prior to conducting such transfer, shall verify with the NRC's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred. If the verification is conducted by contacting the license issuing authority, the transferor shall document the verification. For transfers within the same organization, the licensee does not need to verify the transfer.

(3) In an emergency where the licensee cannot reach the license issuing authority and the license verification system is nonfunctional, the licensee may accept a written certification by the transferee that it is authorized by license to receive the type, form, and quantity of radioactive material to be transferred. The certification must include the license number, current revision number, issuing agency, expiration date, and for a category 1 shipment the authorized address. The licensee shall keep a copy of the certification. The certification must be confirmed by use of the NRC's license verification system or by contacting the license issuing authority by the end of the next business day.

(4) The transferor shall keep a copy of the verification documentation as a record for three years.

(s) Applicability of physical protection of category 1 and category 2 quantities of radioactive material during transit. The shipping

licensee shall be responsible for meeting the requirements of subsection (r) of this section, this subsection, and subsections (t) - (w) of this section unless the receiving licensee has agreed in writing to arrange for the in-transit physical protection required under subsection (r) of this section, this subsection, and subsections (t) - (w) of this section.

(t) Preplanning and coordination of shipment of category 1 or category 2 quantities of radioactive material.

(1) Each licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 1 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall:

(A) Preplan and coordinate shipment arrival and departure times with the receiving licensee;

(B) Preplan and coordinate shipment information with the governor or the governor's designee of any state through which the shipment will pass to:

(i) Discuss the state's intention to provide law enforcement escorts; and

(ii) Identify safe havens; and

(C) Document the preplanning and coordination activities.

(2) Each licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 2 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall coordinate the shipment no-later-than arrival time and the expected shipment arrival with the receiving licensee. The licensee shall document the coordination activities.

(3) Each licensee who receives a shipment of a category 2 quantity of radioactive material shall confirm receipt of the shipment with the originator. If the shipment has not arrived by the no-later-than arrival time, the receiving licensee shall notify the originator.

(4) Each licensee, who transports or plans to transport a shipment of a category 2 quantity of radioactive material, and determines that the shipment will arrive after the no-later-than arrival time provided pursuant to paragraph (2) of this subsection, shall promptly notify the receiving licensee of the new no-later-than arrival time.

(5) The licensee shall retain a copy of the documentation for preplanning and coordination and any revision thereof as a record for three years.

(u) Advance notification of shipment of category 1 quantities of radioactive material. As specified in paragraphs (1) and (2) of this subsection, each licensee shall provide advance notification to the NRC and the governor of a state, or the governor's designee, of the shipment of licensed material in a category 1 quantity, through or across the boundary of the state, before the transport or delivery to a carrier for transport of the licensed material outside the confines of the licensee's facility or other place of use or storage.

(1) Procedures for submitting advance notification.

(A) The notification must be made to the NRC and to the office of each appropriate governor or governor's designee. The contact information, including telephone and mailing addresses, of governors and governors' designees, is available on the NRC's website at <http://nrc-stp.ornl.gov/special/designee.pdf>. A list of the contact information is also available upon request from the Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC

20555-0001. Notifications to the NRC must be to the NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The notification to the NRC may be made by e-mail to RAMQC_SHIPMENTS@nrc.gov or by fax to (301) 816-5151.

(B) A notification delivered by mail must be post-marked at least seven days before transport of the shipment commences at the shipping facility.

(C) A notification delivered by any means other than mail must reach NRC at least four days before the transport of the shipment commences and must reach the office of the governor or the governor's designee at least four days before transport of a shipment within or through the state.

(2) Information to be furnished in advance notification of shipment. Each advance notification of shipment of category 1 quantities of radioactive material must contain the following information, if available at the time of notification:

(A) The name, address, and telephone number of the shipper, carrier, and receiver of the category 1 radioactive material;

(B) The license numbers of the shipper and receiver;

(C) A description of the radioactive material contained in the shipment, including the radionuclides and quantity;

(D) The point of origin of the shipment and the estimated time and date that shipment will commence;

(E) The estimated time and date that the shipment is expected to enter each state along the route;

(F) The estimated time and date of arrival of the shipment at the destination; and

(G) A point of contact, with a telephone number, for current shipment information.

(3) Revision notice.

(A) The licensee shall provide any information not previously available at the time of the initial notification, as soon as the information becomes available but not later than commencement of the shipment, to the governor of the state or the governor's designee and to the NRC's Director of Nuclear Security, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

(B) A licensee shall promptly notify the governor of the state or the governor's designee of any changes to the information provided in accordance with paragraph (2) of this subsection and subparagraph (A) of this paragraph. The licensee shall also immediately notify the NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, of any such changes.

(4) Cancellation notice. Each licensee who cancels a shipment for which advance notification has been sent shall send a cancellation notice to the governor of each state or to the governor's designee previously notified and to the NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, United States Nuclear Regulatory Commission, Washington, DC 20555-0001. The licensee shall send the cancellation notice before the shipment would have commenced or as soon thereafter as possible. The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being cancelled.

(5) Records. The licensee shall retain a copy of the advance notification and any revision and cancellation notices as a record for three years.

(v) Requirements for physical protection of category 1 and category 2 quantities of radioactive material during shipment.

(1) Shipments by road.

(A) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material shall:

(i) Ensure that movement control centers are established that maintain position information from a remote location. These control centers must monitor shipments 24 hours a day, seven days a week, and have the ability to communicate immediately, in an emergency, with the appropriate law enforcement agencies.

(ii) Ensure that redundant communications are established that allow the transport to contact the escort vehicle (when used) and movement control center at all times. Redundant communications may not be subject to the same interference factors as the primary communication.

(iii) Ensure that shipments are continuously and actively monitored by a telemetric position monitoring system or an alternative tracking system reporting to a movement control center. A movement control center must provide positive confirmation of the location, status, and control over the shipment. The movement control center must be prepared to promptly implement preplanned procedures in response to deviations from the authorized route or a notification of actual, attempted, or suspicious activities related to the theft, loss, or diversion of a shipment. These procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route.

(iv) Provide an individual to accompany the driver for those highway shipments with a driving time period greater than the maximum number of allowable hours of service in a 24-hour duty day as established by the Department of Transportation Federal Motor Carrier Safety Administration. The accompanying individual may be another driver.

(v) Develop written normal and contingency procedures to address:

(I) Notifications to the communication center and law enforcement agencies;

(II) Communication protocols. Communication protocols must include a strategy for the use of authentication codes and duress codes and provisions for refueling or other stops, detours, and locations where communication is expected to be temporarily lost;

(III) Loss of communications; and

(IV) Responses to an actual or attempted theft or diversion of a shipment.

(vi) Each licensee who makes arrangements for the shipment of category 1 quantities of radioactive material shall ensure that drivers, accompanying personnel, and movement control center personnel have access to the normal and contingency procedures.

(B) Each licensee that transports category 2 quantities of radioactive material shall maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance.

(C) Each licensee who delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material shall:

(i) Use carriers that have established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control and/or surveillance, the package tracking system must allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control;

(ii) Use carriers that maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

(iii) Use carriers that have established tracking systems that require an authorized signature prior to releasing the package for delivery or return.

(2) Shipments by rail.

(A) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material shall:

(i) Ensure that rail shipments are monitored by a telemetric position monitoring system or an alternative tracking system reporting to the licensee, third-party, or railroad communications center. The communications center shall provide positive confirmation of the location of the shipment and its status. The communications center shall implement preplanned procedures in response to deviations from the authorized route or to a notification of actual, attempted, or suspicious activities related to the theft or diversion of a shipment. These procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route.

(ii) Ensure that periodic reports to the communications center are made at preset intervals.

(B) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material shall:

(i) Use carriers that have established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control and/or surveillance, the package tracking system must allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control.

(ii) Use carriers that maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

(iii) Use carriers that have established tracking systems that require an authorized signature prior to releasing the package for delivery or return.

(3) Investigations. Each licensee who makes arrangements for the shipment of category 1 quantities of radioactive material shall immediately conduct an investigation upon the discovery that a category 1 shipment is lost or missing. Each licensee who makes arrangements for the shipment of category 2 quantities of radioactive material shall immediately conduct an investigation, in coordination with the receiving licensee, of any shipment that has not arrived by the designated no-later-than arrival time.

(w) Reporting of events.

(1) The shipping licensee shall notify the appropriate LLEA, the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224, and the NRC's Operations Center at

(301) 816-5100 within one hour of its determination that a shipment of category 1 quantities of radioactive material is lost or missing. The appropriate LLEA would be the law enforcement agency in the area of the shipment's last confirmed location. During the investigation required by subsection (v)(3) of this section, the shipping licensee will provide agreed upon updates to the executive director and the NRC's Operations Center on the status of the investigation.

(2) The shipping licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 and the NRC's Operations Center at (301) 816-5100 within four hours of its determination that a shipment of category 2 quantities of radioactive material is lost or missing. If, after 24 hours of its determination that the shipment is lost or missing, the radioactive material has not been located and secured, the licensee shall immediately notify the executive director and the NRC's Operations Center.

(3) The shipping licensee shall notify the designated LLEA along the shipment route as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment or suspicious activities related to the theft or diversion of a shipment of a category 1 quantity of radioactive material. As soon as possible after notifying the LLEA, the licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 and the NRC's Operations Center at (301) 816-5100 upon discovery of any actual or attempted theft or diversion of a shipment or any suspicious activity related to the shipment of category 1 radioactive material.

(4) The shipping licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 and the NRC's Operations Center at (301) 816-5100 as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment or any suspicious activity related to the shipment, of a category 2 quantity of radioactive material.

(5) The shipping licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224, the NRC's Operations Center at (301) 816-5100, and the LLEA as soon as possible upon recovery of any lost or missing category 1 quantities of radioactive material.

(6) The shipping licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 and the NRC's Operations Center at (301) 816-5100 as soon as possible upon recovery of any lost or missing category 2 quantities of radioactive material.

(7) The initial telephonic notification required by paragraphs (1) - (4) of this subsection must be followed within a period of 30 days by a written report submitted to the executive director and NRC by an appropriate method listed in 10 CFR §37.7. A written report is not required for notifications on suspicious activities required by paragraphs (3) and (4) of this subsection. In addition, the licensee shall provide one copy of the written report addressed to the Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The report must set forth the following information:

(A) A description of the licensed material involved, including kind, quantity, and chemical and physical form;

(B) A description of the circumstances under which the loss or theft occurred;

(C) A statement of disposition, or probable disposition, of the licensed material involved;

(D) Actions that have been taken, or will be taken, to recover the material; and

(E) Procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed material.

(8) Subsequent to filing the written report, the licensee shall also report any additional substantive information on the loss or theft within 30 days after the licensee learns of such information.

(x) Form of records. Each record required by this section must be legible throughout the retention period specified in regulation by the licensing authority. The record may be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

(y) Record retention. Licensees shall maintain the records that are required in this section for the period specified by the appropriate regulation. If a retention period is not otherwise specified, these records must be retained until the executive director terminates the facility's license. All records related to this section may be destroyed upon executive director termination of the facility license.

(z) Category 1 and category 2 radioactive materials. The terabecquerel (TBq) values are the regulatory standard. The curie (Ci) values specified are obtained by converting from the TBq value. The Ci values are provided for practical usefulness only.
Figure: 30 TAC §336.357(z)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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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



SUBCHAPTER H. LICENSING REQUIREMENTS FOR NEAR-SURFACE LAND DISPOSAL OF LOW-LEVEL RADIOACTIVE WASTE

30 TAC §336.739

Statutory Authority

The new section is proposed under the specific authority of Texas Health and Safety Code (THSC), Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. The new section is also proposed under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules

necessary to carry out its powers and duties under TWC and other laws of the state.

The new section is proposed to implement Senate Bill 347, 83rd Texas Legislature, 2013, and its amendments to THSC, Chapter 401.

§336.739. Volume Reduction.

(a) The compact waste disposal facility license holder may accept nonparty compact waste for disposal at the facility only if the waste has been volume-reduced, if eligible, by at least a factor of three in a manner consistent with Texas Health and Safety Code, Chapter 401, Subchapter F.

(b) Waste has been reduced by a factor of three if the final volume of waste disposed is one-third (1/3) or less of the initial volume.

(1) Initial volume of the waste is the volume of radioactive material generated prior to receiving any processing or operational waste volume reducing methods.

(2) Final volume of the waste is the volume after the waste has been processed, whether by the generator (including any waste minimization as part of the generator's process) or by a commercial waste processor, and is in the final form immediately prior to disposal. Waste packaging is not included in determining the final volume.

(c) Examples and Eligibility.

(1) Examples of volume reduction methods include:

(A) reduction of the volume of ion exchange media loaded into individual demineralizer vessels;

(B) on-line lithiation strategies for reactor coolant purification demineralizers;

(C) intermittent use of some demineralizers instead of continuous use (spent fuel pool);

(D) reduction by compaction of dry active waste or compactible waste;

(E) removal of radioactive particulates from a liquid waste stream by the use of methods such as filters, ion-exchange medium (such as resin), precipitation, flocculation, or settlement (resultant liquid, if still radioactive, would not be considered volume reduced);

(F) incineration (any radioactive effluent captured in a device such as a baghouse or charcoal filter would not be considered volume reduced);

(G) concentration technologies such as evaporation, crystallization, drying, or dewatering; or

(H) repackaging or consolidation of waste in order to more efficiently minimize volume required for disposal in compliance with the license.

(2) Examples of what is not considered volume reduction include:

(A) downblending;

(B) separation of radioactive waste from non-radioactive waste, such as debris or contaminated scrap metal; or

(C) volume reduction based entirely on hypothetical calculations, rather than actual records of historical waste generation.

(3) Waste streams that are not eligible for volume reduction include:

(A) irradiated hardware;

(B) solid forms, such as non-compactible metals or monoliths;

(C) large components;

(D) soils and demolition debris; or

(E) sealed sources.

(d) Recordkeeping.

(1) Maintenance of records. Records detailing compliance with this section must be maintained and available for examination and copying by the executive director or the executive director's designee at all reasonable times. Such records must include information to identify the manifest number(s) and the exact shipping date(s) of the volume-reduced waste being transported to the compact waste disposal facility. Upon request, all records required by this chapter must be assembled at a single location within the state of Texas.

(2) Records retention. Records under this section must be kept for a minimum of five years from the date on which the record is made.

(3) Penalties for records violations. A person that violates this section shall be subject to any action authorized by law to secure compliance, including the assessment of administrative penalties or civil penalties as prescribed by law, and the suspension or revocation of a license.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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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 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.5

The Texas Commission on Fire Protection (the commission) proposes an amendment to Chapter 421, Standards for Certification, concerning, §421.5, Definitions.

The purpose of the proposed amendment is to limit the use of a TEEEX Pro Board certificate toward obtaining an initial commission certification only.

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit from the passage is clear and concise rules regarding requirements for using TEEEX Pro Board certificates in obtaining initial commission certifications. There will be no effect on micro businesses, small businesses or persons required to comply with the amended section as proposed; therefore, no regulatory flexibility analysis is required.

Comments regarding the proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendment is proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which authorizes the commission to establish qualifications for the appointment of fire protection personnel.

The proposed amendment implements Texas Government Code, Chapter 419, §419.008 and §419.032.

§421.5. Definitions.

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

(1) Admission to employment--An entry level full-time employee of a local government entity in one of the categories of fire protection personnel.

(2) Appointment--The designation or assignment of a person to a discipline regulated by the commission. The types of appointments are:

(A) permanent appointment--the designation or assignment of certified fire protection personnel or certified part time fire protection employees to a particular discipline (See Texas Government Code, Chapter 419, §419.032); and

(B) probationary or temporary appointment--the designation or assignment of an individual to a particular discipline, except for head of a fire department, for which the individual has passed the commission's certification and has met the medical requirement of §423.1(c) of this title (relating to Minimum Standards for Structure Fire Protection Personnel), if applicable, but has not yet been certified. (See Texas Government Code, Chapter, §419.032.)

(3) Approved training--Any training used for a higher level of certification must be approved by the commission and assigned to either the A-List or the B-List. The training submission must be in a manner specified by the commission and contain all information requested by the commission. The commission will not grant credit twice for the same subject content or course. Inclusion on the A-List or B-List does not preclude the course approval process as stated elsewhere in the Standards Manual.

(4) Assigned/work--A fire protection personnel or a part-time fire protection employee shall be considered "assigned/working" in a position, any time the individual is receiving compensation and performing the duties that are regulated by the commission and has been permanently appointed, as defined in this section, to the particular discipline.

(5) Assistant fire chief--The officer occupying the first position subordinate to the head of a fire department.

- (6) Auxiliary fire fighter--A volunteer fire fighter.
- (7) Benefits--Benefits shall include, but are not limited to, inclusion in group insurance plans (such as health, life, and disability) or pension plans, stipends, free water usage, and reimbursed travel expenses (such as meals, mileage, and lodging).
- (8) Chief Training Officer--The individual, by whatever title he or she may be called, who coordinates the activities of a certified training facility.
- (9) Class hour--Defined as not less than 50 minutes of instruction, also defined as a contact hour; a standard for certification of fire protection personnel.
- (10) Code--The official legislation creating the commission.
- (11) College credits--Credits earned for studies satisfactorily completed at an institution of higher education accredited by an agency recognized by the U.S. Secretary of Education and including National Fire Academy (NFA) open learning program colleges, or courses recommended for college credit by the American Council on Education (ACE) or delivered through the National Emergency Training Center (both EMI and NFA) programs. A course of study satisfactorily completed and identified on an official transcript from a college or in the ACE National Guide that is primarily related to Fire Service, Emergency Medicine, Emergency Management, or Public Administration is defined as applicable for Fire Science college credit, and is acceptable for higher levels of certification. A criminal justice course related to fire and or arson investigation that is satisfactorily completed and identified on an official transcript from a college or in the ACE National Guide may be used to qualify for Master Arson Investigator certification.
- (12) Commission--Texas Commission on Fire Protection.
- (13) Commission-recognized training--A curriculum or training program which carries written approval from the commission, or credit hours that appear on an official transcript from an accredited college or university, or any fire service training received from a nationally recognized source, i.e., the National Fire Academy.
- (14) Compensation--Compensation is to include wages, salaries, and "per call" payments (for attending drills, meetings or answering emergencies).
- (15) Expired--Any certification that has not been renewed on or before the end of the certification period.
- (16) Federal fire fighter--A person as defined in Texas Government Code, Chapter 419, §419.084(h).
- (17) Fire chief--The head of a fire department.
- (18) Fire department--A department of a local government that is staffed by one or more fire protection personnel or part-time fire protection employees.
- (19) Fire protection personnel--Any person who is a permanent full-time employee of a fire department or governmental entity and who is appointed duties in one of the following categories/disciplines: fire suppression, fire inspection, fire and arson investigation, marine fire fighting, aircraft rescue fire fighting, fire training, fire education, fire administration and others employed in related positions necessarily or customarily appertaining thereto.
- (20) Fire Code Inspection--Also called Fire Safety Inspection as referenced in Texas Government Code, Chapter 419, §419.909. An inspection performed for the purpose of determining and enforcing compliance with an adopted fire code.
- (21) Fire suppression duties--Engaging in the controlling or extinguishment of a fire of any type or performing activities which are required for and directly related to the control and extinguishment of fires or standing by on the employer's premises or apparatus or nearby in a state of readiness to perform these duties.
- (22) Full-time--An officer or employee is considered full-time if the employee works an average of 40 hours a week or averages 40 hours per week or more during a work cycle in a calendar year. For the purposes of this definition paid leave will be considered time worked.
- (23) Government entity--The local authority having jurisdiction as employer of full-time fire protection personnel in a state agency, incorporated city, village, town or county, education institution or political subdivision.
- (24) High school--A school accredited as a high school by the Texas Education Agency or equivalent accreditation agency from another jurisdiction.
- (25) Immediately dangerous to life or health (IDLH)--An atmosphere that poses an immediate threat to life, would cause irreversible adverse health effects, or would impair an individual's ability to escape from a dangerous atmosphere.
- (26) Incipient stage fire--A fire which is in the initial or beginning stage and which can be controlled or extinguished by portable fire extinguishers, Class II standpipe or small hose systems without the need for protective clothing or breathing apparatus.
- (27) Instructor:
- (A) Lead Instructor--Oversees the presentation of an entire course and assures that course objectives are met in accordance with the applicable curriculum or course material. The lead instructor should have sufficient experience in presenting all units of the course so as to be capable of last-minute substitution for other instructors.
- (B) Instructor (also Unit Instructor for wildland courses)--Responsible for the successful presentation of one or more areas of instruction within a course, and should be experienced in the lesson content they are presenting.
- (C) Guest Instructor--An individual who may or may not hold Instructor certification but whose special knowledge, skill, and expertise in a particular subject area may enhance the effectiveness of the training in a course. Guest instructors shall teach under the endorsement of the lead instructor.
- (28) Interior structural fire fighting--The physical activity of fire suppression, rescue or both, inside of buildings or enclosed structures which are involved in a fire situation beyond the incipient stage. (See 29 CFR §1910.155.)
- (29) Municipality--Any incorporated city, village, or town of this state and any county or political subdivision or district in this state. Municipal pertains to a municipality as defined in this section.
- (30) National Fire Academy semester credit hours--The number of hours credited for attendance of National Fire Academy courses is determined as recommended in the most recent edition of the "National Guide to Educational Credit for Training Programs," American Council on Education (ACE).
- (31) National Fire Protection Association (NFPA)--An organization established to provide and advocate consensus codes and standards, research, training, and education for fire protection.
- (32) National Wildfire Coordinating Group (NWCG)--An operational group designed to establish, implement, maintain, and

communicate policy, standards, guidelines, and qualifications for wildland fire program management among participating agencies.

(33) Non-self-serving affidavit--A sworn document executed by someone other than the individual seeking certification.

(34) Participating volunteer fire fighter--An individual who voluntarily seeks certification and regulation by the commission under the Texas Government Code, Chapter 419, Subchapter D.

(35) Participating volunteer fire service organization--A fire department that voluntarily seeks regulation by the commission under the Texas Government Code, Chapter 419, Subchapter D.

(36) Part-time fire protection employee--An individual who is appointed as a part-time fire protection employee and who receives compensation, including benefits and reimbursement for expenses. A part-time fire protection employee is not full-time as defined in this section.

(37) Personal alert safety system (PASS)--Devices that are certified as being compliant with NFPA 1982 and that automatically activates an alarm signal (which can also be manually activated) to alert and assist others in locating a fire fighter or emergency services person who is in danger.

(38) Political subdivision--A political subdivision of the State of Texas that includes, but is not limited to the following:

- (A) city;
- (B) county;
- (C) school district;
- (D) junior college district;
- (E) levee improvement district;
- (F) drainage district;
- (G) irrigation district;
- (H) water improvement district;
- (I) water control and improvement district;
- (J) water control and preservation district;
- (K) freshwater supply district;
- (L) navigation district;
- (M) conservation and reclamation district;
- (N) soil conservation district;
- (O) communication district;
- (P) public health district;
- (Q) river authority;
- (R) municipal utility district;
- (S) transit authority;
- (T) hospital district;
- (U) emergency services district;
- (V) rural fire prevention district; and
- (W) any other governmental entity that:

(i) embraces a geographical area with a defined boundary;

(ii) exists for the purpose of discharging functions of the government; and

(iii) possesses authority for subordinate self-government through officers selected by it.

(39) Pre-fire Planning--Also called a Pre-fire Survey. A walk-through performed by fire fighters for the purpose of gaining familiarity with a building, its contents, and its occupancy.

(40) Reciprocity for IFSAC seals and TEEX Pro Board certificates--Valid documentation of accreditation from the International Fire Service Accreditation Congress and the National Board on Fire Service Professional Qualifications issued by the Texas A&M Engineering Extension Service used for commission certification may only be used for obtaining an initial certification.

(41) Recognition of training--A document issued by the commission stating that an individual has completed the training requirements of a specific phase level of the Basic Fire Suppression Curriculum.

(42) School--Any school, college, university, academy, or local training program which offers fire service training and included within its meaning the combination of course curriculum, instructors, and facilities.

(43) Structural fire protection personnel--Any person who is a permanent full-time employee of a government entity who engages in fire fighting activities involving structures and may perform other emergency activities typically associated with fire fighting activities such as rescue, emergency medical response, confined space rescue, hazardous materials response, and wildland fire fighting.

(44) Trainee--An individual who is participating in a commission approved training program.

(45) Volunteer fire protection personnel--Any person who has met the requirements for membership in a volunteer fire service organization, who is assigned duties in one of the following categories: fire suppression, fire inspection, fire and arson investigation, marine fire fighting, aircraft rescue fire fighting, fire training, fire education, fire administration and others in related positions necessarily or customarily appertaining thereto.

(46) Volunteer fire service organization--A volunteer fire department or organization not under mandatory regulation by the commission.

(47) Years of experience--For purposes of higher levels of certification or fire service instructor certification:

(A) Except as provided in subparagraph (B) of this paragraph, years of experience is defined as full years of full-time, part-time or volunteer fire service while holding:

(i) a commission certification as a full-time, or part-time employee of a government entity, a member in a volunteer fire service organization, and/or an employee of a regulated non-governmental fire department; or

(ii) a State Firemen's and Fire Marshals' Association advanced fire fighter certification and have successfully completed, as a minimum, the requirements for an Emergency Care Attendant (ECA) as specified by the Department of State Health Services (DSHS), or its successor agency, or its equivalent; or

(iii) an equivalent certification as a full-time fire protection personnel of a governmental entity from another jurisdiction, including the military, or while a member in a volunteer fire service organization from another jurisdiction, and have, as a minimum, the requirements for an ECA as specified by the DSHS, or its successor agency, or its equivalent; or

(iv) for fire service instructor eligibility only, a State Firemen's and Fire Marshals' Association Level II Instructor Certification, received prior to June 1, 2008 or Instructor I received on or after June 1, 2008 or an equivalent instructor certification from the DSHS or the Texas Commission on Law Enforcement. Documentation of at least three years of experience as a volunteer in the fire service shall be in the form of a non self-serving sworn affidavit.

(B) For fire service personnel certified as required in subparagraph (A) of this paragraph on or before October 31, 1998, years of experience includes the time from the date of employment or membership to date of certification not to exceed one year.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Tim Rutland

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3813



CHAPTER 455. MINIMUM STANDARDS FOR WILDLAND FIRE PROTECTION CERTIFICATION

37 TAC §455.3

The Texas Commission on Fire Protection (the commission) proposes an amendment to Chapter 455, Minimum Standards for Wildland Fire Protection Certification, concerning, §455.3, Minimum Standards for Basic Wildland Fire Protection Certification.

The purpose of the proposed amendment is to delete obsolete language regarding testing for basic wildland certification. The exam was waived during the first year following the introduction of the certification.

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed amendment is in effect, there will be no fiscal impact on state or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit from the passage is clear and concise rules regarding requirements for obtaining basic wildland certification. There will be no effect on micro businesses, small businesses or persons required to comply with the amended section as proposed; therefore, no regulatory flexibility analysis is required.

Comments regarding the proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendment is proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.026, which authorizes the commission to set

and establish fees for each certificate the commission issues or renews.

The proposed amendment implements Texas Government Code, Chapter 419, §419.008 and §419.026.

§455.3. *Minimum Standards for Basic Wildland Fire Protection Certification.*

In order to be certified as Basic Wildland Fire Protection personnel, an individual must:

(1) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as Wildland Fire Fighter Level I; or

(2) complete a commission approved Basic Wildland Fire Protection program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Basic Wildland Fire Protection training program shall consist of one of the following:

(A) completion of the commission approved Basic Wildland Fire Fighter Curriculum, as specified in the applicable chapter of the commission's Certification Curriculum Manual; or

(B) completion of the following National Wildfire Coordinating Group (NWCG) courses:

(i) S-130: Firefighter Training

(ii) S-190: Introduction to Wildland Fire Behavior

(iii) L-180: Human Factors on the Fireline

(iv) I-100: Introduction to the Incident Command System, or an equivalent basic incident command system course such as NIMS IS-100.

~~{(3) The commission examination requirement is waived for individuals who have completed the training requirements in paragraph (2)(A) or (B) of this section and apply for certification by August 31, 2013. After this date, individuals must successfully pass the commission examination prior to applying for certification.}~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 20, 2015.

TRD-201503251

Tim Rutland

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 936-3813



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM

SUBCHAPTER D. AGENCY MONITORING ACTIVITIES

40 TAC §802.67

The Texas Workforce Commission (Commission) proposes amendments to the following section of Chapter 802, relating to the Integrity of the Texas Workforce System:

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 802 rule change is to recognize the maturity and the evolution of the Texas workforce system since the Board oversight capacity rules were originally adopted in 2004. At that time, Boards were accountable for 46 performance measures. In 2015, Boards are accountable for 10 performance measures. Because the existing performance criteria are heavily based on meeting a certain percentage of targets, this drastic reduction has significantly affected Board oversight capacity standards. In addition, the criteria used in evaluating Board oversight capacity should be adaptable to changing conditions, including new federal or state legislation, guidance or performance measures, and extraordinary circumstances (e.g., natural disasters).

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER D. AGENCY MONITORING ACTIVITIES

The Commission proposes the following amendments to Subchapter D:

§802.67. Commission Evaluation of Board Oversight Capacity Section 802.67:

--adds that the Agency will evaluate, at least annually, each Board's oversight capacity, including its ability to:

--develop, maintain, and upgrade comprehensive fiscal management systems;

--hire, train, and retain qualified staff to carry out the Board's oversight activities;

--select and oversee local contractors to improve the delivery of workforce services;

--oversee and improve the operations of Workforce Solutions Offices served by the Board;

--manage each contractor's performance across multiple Board programs; and

--identify and resolve long-standing Board oversight problems and contract provider performance issues;

--removes the criteria currently specified, and adds that the Commission:

--shall approve in an open meeting specific criteria to be used in its evaluation of Board oversight capacity and will communicate these criteria to Boards through a Workforce Development Letter;

--shall approve in an open meeting, on an as-needed basis, updates to the criteria used to evaluate Board oversight capacity; and

--may consider any extraordinary situation, including natural disasters, when evaluating the factors in subsection (b); and

--amends relettered subsection (e) to indicate that the Commission does not intend to update Board ratings more often than annually, unless new information or circumstances (e.g., economic factors, natural disasters, or performance reporting errors) warrant consideration.

Certain subsections and paragraphs have been relettered and renumbered to reflect changes.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses, as these proposed rules place no requirements on small businesses.

Doyle Fuchs, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Reagan Miller, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide the public with an effective and comprehensive summary of each Board's capacity to oversee and manage local funds and the delivery of local workforce services.

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

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and re-

view on November 17, 2014. The Commission also conducted a conference call with Board executive directors and Board staff on December 5, 2014, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§802.67. Commission Evaluation of Board Oversight Capacity.

(a) This section outlines the process [and criteria] used by the Commission to evaluate Board oversight capacity related to the management of [to oversee and manage] local funds and the delivery of local workforce services.

(b) The Agency shall evaluate, at least annually, each Board's oversight capacity, including the Board's ability to: [The Commission shall use oversight methods outlined in this chapter and elsewhere in statute and rules to evaluate each Board's performance and compliance with applicable laws; regulations; provisions of contracts and Board plans; and official directives and circulars including; but not limited to; DOL Training and Employment Guidance Letters; DOL Training and Employment Notices; U.S. Department of Health and Human Services guidance letters; Commission rules contained in Part 20 of this title; Texas Workforce Commission WD Letters; the Agency's Financial Manual for Grants and Contracts; and other Agency guidance. In particular, the Commission shall evaluate and make findings as appropriate relating to Board fulfillment of responsibilities relating to:]

(1) develop, maintain, and upgrade [developing, maintaining, and upgrading] comprehensive fiscal management [and accountability] systems;

(2) hire, train, and retain [hiring, training, and retaining] qualified staff to carry out the Board's oversight activities;

(3) select and oversee [selecting and overseeing] workforce service providers to improve the delivery of workforce services;

(4) oversee and improve the operations [overseeing and improving operation] of Workforce Solutions Offices [in the workforce area] served by the Board;

(5) manage each [managing] workforce service provider's [providers'] performance across multiple Board programs [and achieving required performance targets]; and

(6) identify and resolve [identifying and resolving] long-standing Board oversight problems [of the Board] and [performance problems of] workforce service provider performance issues [providers].

(c) The Commission shall approve, in an open meeting, specific criteria to be used in its evaluation of Board oversight capacity and shall communicate these criteria to Boards through issuance of a

Workforce Development Letter. The Commission shall approve, in an open meeting, on an as-needed basis, updates to the criteria used to evaluate Board oversight capacity. [The Commission shall rate each Board's capacity as "above standards," "within standards," or "below standards." The following criteria shall be used to set the rating.]

~~[(1) A Board will be rated as above standards if:]~~

~~[(A) the Board meets its targets as defined in §800.2(13) of this title on 90 percent of its measures; and]~~

~~[(B) the Board does not miss the target on any single measure by more than 10 percent of target;]~~

~~[(C) there are no disallowed costs since the prior evaluation; and]~~

~~[(D) there are no repeat findings;]~~

~~[(2) A Board will be rated as within standards if:]~~

~~[(A) the Board meets its targets as defined in §800.2(13) of this title on 80 percent of its measures; and]~~

~~[(B) the Board does not miss the target on any single measure by more than 15 percent of target;]~~

~~[(C) disallowed costs do not exceed 1 percent of allocation; and]~~

~~[(D) there are no repeat findings;]~~

~~[(3) A Board will be rated as below standards if the Board is:]~~

~~[(A) found to not be above or within standards or if there are significant findings; or]~~

~~[(B) under a level-one, -two, or -three sanction as defined in §802.123 of this chapter;]~~

~~[(4) For the purpose of calculating "disallowed costs" as used in this section, do not include such costs that meet the following three criteria: discovered, quantified, and self-reported to the Commission by a Board unless the Commission finds the disallowed costs were the result of gross mismanagement or other significant violation of Board responsibilities;]~~

~~(d) [(5)] Notwithstanding any other provision of this section, the Commission may consider any extraordinary situation related to any of the factors identified in subsection (b) of this section, including natural disasters.[:]~~

~~[(A) The Commission may consider any extraordinary situation related to any of the factors identified in subsection (b) of this section;]~~

~~[(B) The Commission may exclude from consideration under this section performance on measures:]~~

~~[(i) related to new Board responsibilities; or]~~

~~[(ii) for which the Commission finds good cause exists for failure to meet the target;]~~

~~(e) [(4)] Annually [At least annually], the Commission shall post the results of its evaluation of each Board and each Board's performance on its website [Web site] with explanation of the rating, rating criteria, and performance measures in a format that is readily accessible to and understandable by a member of the public.~~

~~(1) The explanation shall include specifically how each of the criteria was [were] applied for each Board [and how that affected the overall rating].~~

(2) Evaluations shall be performed using information at the Commission's disposal at the time of the evaluation. If no updated information is available, the Commission is not obligated to schedule a review or visit to confirm or obtain new information.

(3) The Commission may update the Board ratings more often than annually if the Commission determines new information or circumstances warrant consideration [new information becomes available but does not intend to update them more often than quarterly].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 19, 2015.

TRD-201503241

Laurie Biscoe

Deputy Director, Workforce Development Division
Texas Workforce Commission

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 475-0829



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 206. MANAGEMENT

SUBCHAPTER C. PROCEDURE FOR PETITION TO ADOPT RULES

43 TAC §206.41

The Texas Department of Motor Vehicles (department) proposes an amendment to Chapter 206, Management, Subchapter C, Procedures for Petition to Adopt Rules, §206.41, Petition.

EXPLANATION OF PROPOSED AMENDMENT

House Bill 763, 84th Legislature, Regular Session, 2015, amended Government Code, §2001.021, by adding a definition for the term "interested person." Section 2001.021(a) says that an "interested person" may petition a state agency to adopt a rule. The new definition refers to a "resident" of this state, as well as a business entity, governmental subdivision, public organization, and private organization "located" in this state.

An amendment is proposed to §206.41 to require the petitioner to include their Texas physical address in their written request for the adoption of a rule. The department will use the physical address to determine whether a petitioner fits within the definition of an "interest person."

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendment as proposed is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendment.

David D. Duncan, General Counsel, has certified that there will be no impact on local economies or overall employment as a result of enforcing or administering the amendment.

PUBLIC BENEFIT AND COST

Mr. Duncan has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing or administering the amendment will be a rule that helps the department comply with Government Code, §2001.021.

There are no anticipated economic costs for persons required to comply with the proposed amendment. There are no anticipated adverse economic effects on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests 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 so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendment may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas, 78731, or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on October 5, 2015.

STATUTORY AUTHORITY

The amendment is proposed under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the laws of this state; and more specifically, Government Code, §2001.004(1), which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, and Government Code, §2001.021(b), which requires state agencies by rule to prescribe the form for a petition under §2001.021 and the procedure for its submission, consideration, and disposition.

CROSS REFERENCE TO STATUTE

Government Code, §2001.021.

§206.41. *Petition.*

Any interested person may petition the department requesting the adoption of a rule. Such petition must be in writing directed to the executive director at the department's headquarters building in Austin and shall contain the person's physical address in Texas and a clear and concise statement of the substance of the proposed rule, together with a brief explanation of the purpose to be accomplished through such adoption. Within 60 days after receipt, the department will either deny the petition in writing, stating its reasons therefore, or will initiate rulemaking proceedings in accordance with the Administrative Procedure Act (Government Code, Chapter 2001, Subchapter B).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 18, 2015.

TRD-201503174

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CHAPTER 208. EMPLOYMENT PRACTICES
SUBCHAPTER B. EMPLOYEE TRAINING
AND EDUCATION

43 TAC §208.12

The Texas Department of Motor Vehicles (department) proposes an amendment to Chapter 208, Employment Practices, §208.12, General Standards.

EXPLANATION OF PROPOSED AMENDMENT

The proposed amendment to §208.12 is necessary to implement House Bill 3337, 84th Legislature, Regular Session, 2015, which amends Government Code, §656.048(b), requiring that the executive head of a state agency authorize tuition reimbursement payments of an administrator or employee of the agency, prior to reimbursement.

Proposed amendment to §208.12, General Standards, implements House Bill 3337 by adding subsection (d)(4), which establishes that the executive director must authorize tuition reimbursement to program participants prior to the reimbursement.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendment as proposed is in effect, there will be no anticipated fiscal implications for state or local governments as a result of enforcing or administering the proposed amendment.

Sharon Brewer, Director of the Human Resources Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amendment.

PUBLIC BENEFIT AND COST

Ms. Brewer has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing or administering the amendment will be ensuring that the executive director of the agency approves all employee tuition reimbursements. For each of the first five years the proposed amendment is in effect, there are no anticipated economic costs for persons required to comply with the amendment. There will be no adverse economic effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests 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 so does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amended section may be submitted to David D. Duncan, General Counsel, Texas

Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on October 5, 2015.

STATUTORY AUTHORITY

The amendment is 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 more specifically, Government Code, §656.048(b), which requires a state agency to adopt rules requiring that before an administrator or employee of the agency may be reimbursed under Government Code, §656.047(b), the executive head of the agency must authorize the tuition reimbursement payment.

CROSS REFERENCE TO STATUTE

Government Code, §656.047.

§208.12. *General Standards.*

(a) *Applicability.* This section establishes standards applicable to all program participants.

(b) *Eligibility and reimbursement.* An employee must meet the following requirements to be eligible for an assistance program. The employee must:

(1) be a full-time, regular status employee who has been continuously employed for one year at the time of application;

(2) maintain satisfactory job performance;

(3) not have any disciplinary action for six months prior to applying or during the program; and

(4) sign a commitment to employment for six months to begin the month following reimbursement.

(c) *Scope of assistance.*

(1) *Eligible expenses.*

(A) The department may pay the cost of fees on a per-hour basis, in an amount equal to the latest average semester hour cost for Texas public colleges and universities, as reported by the Texas Higher Education Coordinating Board. The participant will be responsible for paying the difference in cost.

(B) The department may provide reimbursement for mandatory fees.

(2) *Use of state property.* A program participant may not use duty hours for attending classes, studying, or other activities associated with the program. A program participant may use state equipment for activities related to coursework with supervisor approval.

(3) *Retaken courses.* The department will not reimburse a program participant for a course taken more than once.

(d) *Conditions of reimbursement.*

(1) Within four weeks of receipt of grades, a program participant shall provide the department with:

(A) a passing grade report or transcript verifying the passing course credit; and

(B) an itemized statement of tuition and mandatory fees.

(2) The department may require an employee to reimburse the department for tuition if the employee does not complete the employment commitment.

(3) The executive director shall adopt policies related to education and training for employees.

(4) Before a program participant may be reimbursed under this section, the executive director must authorize the reimbursement payment.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 18, 2015.

TRD-201503176

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 465-5665



CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.56

The Texas Department of Motor Vehicles (department) proposes amendments to §217.56, Registration Reciprocity Agreements.

EXPLANATION OF PROPOSED AMENDMENTS

Amendments are proposed to §217.56 to adopt by reference the future amendments to the International Registration Plan (IRP) that become effective on January 1, 2016, and to correct language that is inconsistent with the IRP. An amendment to §217.56 is also proposed for clarity.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments.

Jimmy Archer, Director, Motor Carrier Division, has certified that there will be no impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

If the correct number of member jurisdictions of the IRP approves a ballot to amend the IRP, Texas must comply with the amended IRP when issuing apportioned registration. The department does not have the authority to amend the IRP in §217.56.

PUBLIC BENEFIT AND COST

Mr. Archer 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 consistency between §217.56 and the IRP. There are no anticipated economic costs for persons required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests 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 so does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on October 5, 2015.

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 adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and more specifically, Transportation Code, §502.091, which authorizes the department to adopt rules to carry out the IRP.

CROSS REFERENCE TO STATUTE

Transportation Code, §502.091.

§217.56. *Registration Reciprocity Agreements.*

(a) Purpose. To promote and encourage the fullest possible use of the highway system and contribute to the economic development and growth of the State of Texas and its residents, the department is authorized by Transportation Code, §502.091 to enter into agreements with duly authorized officials of other jurisdictions, including any state of the United States, the District of Columbia, a foreign country, a state or province of a foreign country, or a territory or possession of either the United States or of a foreign country, and to provide for the registration of vehicles by Texas residents and nonresidents on an allocation or distance apportionment basis, and to grant exemptions from the payment of registration fees by nonresidents if the grants are reciprocal to Texas residents.

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

(1) Cab card--The apportioned vehicle registration receipt that contains, but is not limited to, the vehicle description and the registered weight at which the vehicle may operate in each jurisdiction.

(2) Department--The Texas Department of Motor Vehicles.

(3) Director--The director of the Motor Carrier Division, Texas Department of Motor Vehicles.

(4) Executive director--The chief executive officer of the department.

(5) Regional Service Center--A department office which provides specific services to the public, including replacement titles, bonded title rejection letters, and apportioned registration under the International Registration Plan (IRP).

(6) Temporary cab card--A temporary registration permit authorized by the department that allows the operation of a vehicle for 30 days subject to all rights and privileges afforded to a vehicle displaying apportioned registration.

(c) Multilateral agreements.

(1) Authority. The executive director may on behalf of the department enter into a multilateral agreement with the duly authorized officials of two or more other jurisdictions to carry out the purpose of this section.

(2) International Registration Plan.

(A) Applicability. The IRP is a registration reciprocity agreement among states of the United States and other jurisdictions providing for payment of registration fees on the basis of fleet distance operated in various jurisdictions. Its purpose is to promote and encourage the fullest possible use of the highway system by authorizing apportioned registration for commercial motor vehicles and payment of appropriate vehicle registration fees and thus contributing to the economic development and growth of the member jurisdictions.

(B) Adoption. The department adopts by reference the January 1, 2015, [2014,] edition of the IRP. Effective January 1, 2016, [2015,] the department adopts by reference the amendments to the IRP with an effective date of January 1, 2016. [2015,] Effective July 1, 2016, the department adopts by reference the amendment to the IRP with an effective date of July 1, 2016. The department further adopts by reference the July 1, 2013, edition of the IRP Audit Procedures Manual. In the event of a conflict between this section and the IRP or the IRP Audit Procedures Manual, the IRP and the IRP Audit Procedures Manual control. Copies of the documents are available for review in the Motor Carrier Division, Texas Department of Motor Vehicles. Copies are also available on request. The following words and terms, when used in the IRP or in paragraph (2) of this subsection, shall have the following meanings, unless the context clearly indicates otherwise.

(i) Apportionable vehicle--Any vehicle - except recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, [buses used in transportation of chartered parties,] and government-owned vehicles - used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and used either for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property and:

(I) is a power unit having two axles and a gross vehicle weight or registered gross vehicle weight in excess of 26,000 pounds (11,793.401 kilograms);

(II) is a power unit having three or more axles, regardless of weight;

(III) is used in combination, when the weight of such combination exceeds 26,000 pounds (11,793.401 kilograms) gross vehicle weight; or

(IV) at the option of the registrant, a power unit, or the power unit in a combination [trucks, truck tractors, or combinations] of vehicles having a gross vehicle weight of 26,000 pounds (11,793.401 kilograms) or less[; or buses used in transportation of chartered parties].

(ii) Commercial vehicle--A vehicle or combination of vehicles designed and used for the transportation of persons or property in furtherance of any commercial enterprise, for hire or not for hire.

(iii) Erroneous issuance--Apportioned registration issued based on erroneous information provided to the department.

(iv) Established place of business--A physical structure owned or leased within the state of Texas by the applicant or fleet registrant and maintained in accordance with the provisions of the IRP.

(v) Fleet distance--All distance operated by an apportionable vehicle or vehicles used to calculate registration fees for the various jurisdictions.

(C) Application.

(i) An applicant must submit an application to the department on a form prescribed by the director, along with additional documentation as required by the director.

(ii) Upon approval of the application, the department will compute the appropriate registration fees and notify the registrant.

(D) Fees. Upon receipt of the applicable fees in the form as provided by §209.23 of this title (relating to Methods of Payment), the department will issue one or two license plates and a cab card for each vehicle registered.

(E) Display.

(i) The department will issue one license plate for a tractor, truck tractor, trailer, and semi-trailer. The license plate issued to a tractor or a truck tractor shall be installed on the front of the tractor or truck tractor, and the license plate issued for a trailer or semi-trailer shall be installed on the rear of the trailer or semi-trailer.

(ii) The department will issue two license plates for all other vehicles that are eligible to receive license plates under the IRP. Once the department issues two license plates for a vehicle listed in this clause, one plate shall be installed on the front of the vehicle, and one plate shall be installed on the rear of the vehicle.

(iii) The cab card shall be carried at all times in the vehicle in accordance with the IRP.

(F) Audit. An audit of the registrant's vehicle operational records may be conducted by the department according to the IRP provisions and the IRP Audit Procedures Manual. Upon request, the registrant shall provide the operational records of each vehicle for audit in unit number order, in sequence by date, and including, but not limited to, a summary of distance traveled by each individual vehicle on a monthly, quarterly, and annual basis with distance totaled separately for each jurisdiction in which the vehicle traveled.

(G) Assessment. The department may assess additional registration fees of up to 100% [100 percent] of the apportionable fees paid by the registrant for the registration of its fleet in the registration year to which the records pertain, as authorized by the IRP, [Texas registration fees,] if an audit conducted under subparagraph (F) of this paragraph reveals that:

(i) the operational records indicate that the vehicle did not generate interstate distance in two or more member jurisdictions for the distance reporting period supporting the application being audited, plus the six-month period immediately following that distance reporting period;

(ii) the registrant failed to provide complete operational records; or

(iii) the distance must be adjusted, and the adjustment results in a shortage of registration fees due Texas or any other IRP jurisdiction.

(H) Refunds. If an audit conducted under subparagraph (F) of this paragraph reveals an overpayment of fees to Texas or any other IRP jurisdiction, the department will refund the overpayment of registration fees in accordance with Transportation Code, §502.195 and the IRP. Any registration fees refunded to a carrier for another jurisdic-

tion will be deducted from registration fees collected and transmitted to that jurisdiction.

(I) Cancellation. The director or the director's designee may cancel a registrant's apportioned registration and all privileges provided by the IRP if the registrant:

(i) submits payment in the form of a check that is dishonored;

(ii) files or provides erroneous information to the department; or

(iii) fails to:

(I) remit appropriate fees due each jurisdiction in which the registrant is authorized to operate;

(II) meet the requirements of the IRP concerning established place of business;

(III) provide operational records in accordance with subparagraph (F) of this paragraph;

(IV) provide an acceptable source document as specified in the IRP; or

(V) pay an assessment pursuant to subparagraph (G) of this paragraph.

(J) Enforcement of cancelled registration.

(i) Notice. If a registrant is assessed additional registration fees, as provided in subparagraph (G) of this paragraph, and the additional fees are not paid by the due date provided in the notice or it is determined that a registrant's apportioned license plates and privileges should be canceled, as provided in subparagraph (I) of this paragraph, the director or the director's designee will mail a notice by certified mail to the last known address of the registrant. The notice will state the facts underlying the assessment or cancellation, the effective date of the assessment or cancellation, and the right of the registrant to request a conference as provided in clause (ii) of this subparagraph.

(ii) Conference. A registrant may request a conference upon receipt of a notice issued as provided by clause (i) of this subparagraph. The request must be made in writing to the director or the director's designee within 30 days of the date of the notice. If timely requested, the conference will be scheduled and conducted by the director or the director's designee at division headquarters in Austin and will serve to abate the assessment or cancellation unless and until that assessment or cancellation is affirmed or disaffirmed by the director or the director's designee. In the event matters are resolved in the registrant's favor, the director or the director's designee will mail the registrant a notice of withdrawal, notifying the registrant that the assessment or cancellation is withdrawn, and stating the basis for that action. In the event matters are not resolved in the registrant's favor, the director or the director's designee will issue a ruling reaffirming the department's assessment of additional registration fees or cancellation of apportioned license plates and privileges. The registrant has the right to appeal in accordance with clause (iii) of this subparagraph.

(iii) Appeal. If a conference held in accordance with clause (ii) of this subparagraph fails to resolve matters in the registrant's favor, the registrant may request an administrative hearing. The request must be in writing and must be received by the director no later than the 20th day following the date of the ruling issued under clause (ii) of this subparagraph. If requested within the designated period, the hearing will be initiated by the department and will be conducted in accordance with Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases). Assessment or cancellation is abated

unless and until affirmed or disaffirmed by order of the Board of the Texas Department of Motor Vehicles.

(K) Reinstatement.

(i) The director or the director's designee will reinstate apportioned registration to a previously canceled registrant if all applicable fees and assessments due on the previously canceled apportioned account have been paid and the applicant provides proof of an acceptable recordkeeping system for a period of no less than 60 days.

(ii) The application for the following registration year will be processed in accordance with the provisions of the IRP.

(L) Denial of apportioned registration for safety reasons. The department will comply with the requirements of the Performance and Registration Information Systems Management program (PRISM) administered by the Federal Motor Carrier Safety Administration (FMCSA).

(i) Denial or suspension of apportioned registration. Upon notification from the FMCSA that a carrier has been placed out of service for safety violations, the department will:

(I) deny initial issuance of apportioned registration;

(II) deny authorization for a temporary cab card, as provided for in subparagraph (M) of this paragraph;

(III) deny renewal of apportioned registration; or

(IV) suspend current apportioned registration.

(ii) Issuance after denial of registration or reinstatement of suspended registration. The director or the director's designee will reinstate or accept an initial or renewal application for apportioned registration from a registrant who was suspended or denied registration under clause (i) of this subparagraph upon presentation of a Certificate of Compliance from FMCSA, in addition to all other required documentation and payment of fees.

(M) Temporary cab card.

(i) Application. The department may authorize issuance of a temporary cab card to a motor carrier with an established Texas apportioned account for a vehicle upon proper submission of all required documentation, a completed application, and all fees for either:

(I) Texas title as prescribed by Transportation Code, Chapter 501 and Subchapter A of this chapter (relating to Motor Vehicle Titles); or

(II) registration receipt to evidence title for registration purposes only (Registration Purposes Only) as provided for in Transportation Code, §501.029 and §217.24 of this title (relating to Vehicle Last Registered in Another Jurisdiction).

(ii) Title application. A registrant who is applying for a Texas title as provided for in clause (i)(I) of this subparagraph and is requesting authorization for a temporary cab card, must submit to a Regional Service Center by email, fax, overnight mail, or in person a photocopy of the title application receipt issued by the county tax assessor-collector's office [to a Regional Service Center by email, fax, overnight mail, or in person].

(iii) Registration Purposes Only. A registrant who is applying for Registration Purposes Only under clause (i)(II) of this subparagraph and is requesting authorization for a temporary cab card, must submit an application and all additional original documents or

copies of original documents required by the director to a Regional Service Center by email, fax, or overnight mail or in person.

(iv) Department approval. On department approval of the submitted documents, the department will send notice to the registrant to finalize the transaction and make payment of applicable registration fees.

(v) Finalization and payment of fees. To finalize the transaction and print the temporary cab card, the registrant may compute the registration fees through the department's apportioned registration software application, TxIRP system, and:

(I) make payment of the applicable registration fees to the department as provided by §209.23 of this title (related to Methods of Payment); and

(II) afterwards, mail or deliver payment of the title application fee in the form of a check, certified cashier's check, or money order payable to the county tax assessor-collector in the registrant's county of residency and originals of all copied documents previously submitted.

(vi) Deadline. The original documents and payment must be received by the Regional Service Center within 72-hours after the time that the office notified the registrant of the approval to print a temporary cab card as provided in clause (iv) of this subparagraph.

(vii) Failure to meet deadline. If the registrant fails to submit the original documents and required payment within the time prescribed by clause (vi) of this subparagraph, the registrant's privilege to use this expedited process to obtain a temporary cab card will be denied by the department for a period of six months from the date of approval to print the temporary cab card.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 20, 2015.

TRD-201503247

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 465-5665



SUBCHAPTER I. SALVAGE VEHICLE DEALERS

43 TAC §§217.181 - 217.192

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

The Texas Department of Motor Vehicles (department) proposes the repeal of Chapter 217, Subchapter I, Salvage Vehicle Dealers, §217.181, Purpose and Scope; §217.182, Definitions; §217.183, Classification of Salvage Vehicle Dealer Licenses; §217.184, Salvage Vehicle Dealer License; §217.185, Salvage Vehicle Agent License; §217.186, Investigation, Report by the Department, and Issuance of License; §217.187, Place of Business; §217.188, Change of Licensee's Status; §217.189, License Renewal; §217.190, License Duties; §217.191, Record

of Purchases, Sales, and Inventory; and §217.192, Administrative Sanctions and Procedures.

EXPLANATION OF PROPOSED REPEAL

The department is proposing the repeal of Chapter 217, Subchapter I, Salvage Vehicle Dealers. Simultaneously, the department is proposing new Chapter 221, Salvage Vehicle Dealers, Salvage Pool Operators and Salvage Vehicle Rebuilders, which will replace Chapter 217, Subchapter I.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the proposed repeal is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed repeal.

William P. Harbeson, Director of the Enforcement Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed repeal.

PUBLIC BENEFIT AND COST

Mr. Harbeson has also determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of enforcing or administering the proposed repeal would be facilitating the proposed new Chapter 221. There are no anticipated economic costs for persons required to comply with the proposed repeal. There will be no adverse economic effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests 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 so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeals may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on October 5, 2015.

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §1002.001, which provides the board of the Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department.

CROSS REFERENCE TO STATUTE

No other code, article, or statute is affected by this proposal.

§217.181. Purpose and Scope.

§217.182. Definitions.

§217.183. Classification of Salvage Vehicle Dealer Licenses.

§217.184. Salvage Vehicle Dealer License.

§217.185. Salvage Vehicle Agent License.

§217.186. Investigation, Report by the Department, and Issuance of License.

§217.187. Place of Business.

§217.188. Change of Licensee's Status.

§217.189. *License Renewal.*

§217.190. *License Duties.*

§217.191. *Record of Purchases, Sales, and Inventory.*

§217.192. *Administrative Sanctions and Procedures.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2015.

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David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 465-5665



CHAPTER 221. SALVAGE VEHICLE DEALERS, SALVAGE POOL OPERATORS AND SALVAGE VEHICLE REBUILDERS

The Texas Department of Motor Vehicles (department) proposes new 43 TAC Chapter 221, Salvage Vehicle Dealers, Salvage Pool Operators and Salvage Vehicle Rebuilders, which includes new Subchapter A, General Provisions: §221.1, Purpose and Scope; §221.2, Definitions; Subchapter B, Licensing: §221.11, License and Endorsement Required; §221.12, Salvage Vehicle Agent; §221.13, License Term and Fees; §221.14, License Applications; Generally; §221.15, Required License Application Information; §221.16, Required Attachments to the License Application; §221.17, License Processing for Military Service Members, Spouses and Veterans; §221.18, Additional, New, or Closed Location; §221.19, Change of License Holder's Name or Ownership; §221.20, License Renewal; Subchapter C, Licensed Operations: §221.41, Location Requirements; §221.42, Operations at Licensed Business Location; §221.43, Business Hours; §221.44, Business Sign Requirements; §221.45, Business Office; §221.46, Display of License; §221.47, Evidence of Ownership; §221.48, Scrapped or Destroyed Motor Vehicle; §221.49, Unique Inventory Number; §221.50, Restrictions on Sales of Flood Damaged Vehicles; §221.51, Duty to Identify Motor Vehicles Offered for Sale; §221.52, Export-only Sales; §221.53, Casual Sales; Subchapter D, Records: §221.71, Records; Generally; §221.72, Record Retention; §221.73, Content of Records; Subchapter E, Administrative Procedures: §221.91, Notice of Department Decision; §221.92, Notice of Hearing; §221.93, Final Decisions and Orders; Motions for Rehearing; §221.94, Judicial Review of Final Order; §221.95, Delegation of Final Order Authority; Subchapter F, Administrative Sanctions: §221.111, Denial of License; §221.112, Suspension, Revocation and Administrative Penalties; §221.113, Suspension or Refusal to Renew Due to Failure to Pay Court-ordered Child Support; §221.114, Re-application After Revocation of License; and, §221.115, Refund of Fees.

EXPLANATION OF PROPOSED NEW CHAPTER

The existing Chapter 217, Vehicles Titles and Registration, Subchapter I, Salvage Vehicle Dealers, is proposed for repeal simultaneously with proposal of new Chapter 221, Subchapters A - F. The new chapter will move salvage rules from Chapter 217, Vehicle Titles and Registration, to a new dedicated chapter, Salvage

Vehicle Dealers, Salvage Pool Operators and Salvage Vehicle Rebuilders, which will facilitate its use.

Proposed new §221.1 describes generally the responsibilities of the department to enforce Occupations Code, Chapter 2302, and provides an overview of the new chapter and its content. Proposed new §221.2 provides the definition of terms that required definition, such as "new automobile dealer," and "used automobile dealer," clarified other definitions, and deleted unnecessary definitions.

Proposed new §221.11 clarifies the requirements for a salvage vehicle dealer license and endorsements, and lists the persons that are not required to obtain a salvage vehicle dealer license. Proposed new §221.12 clarifies the requirements for licensing of a salvage vehicle agent. Proposed new §221.13 increases the fee for endorsements to the salvage vehicle dealer license from \$95 per year to \$120 per year. This proposed new section also allows the department to prorate fees to assist salvage vehicle dealers in synchronizing their license term with other licenses they may hold. Proposed new §221.14 clarifies the required information that must be submitted to the department with a salvage vehicle dealer license application. Proposed new §221.15 provides information required on salvage vehicle dealer applications. Proposed new §221.16 clarifies the attachments that a license applicant must submit to the department with an application. Proposed new §221.17 confirms the requirements for processing a license application submitted by a veteran, military member or military spouse. Proposed new §221.18 clarifies the requirements if a salvage vehicle dealer opens an additional business location in the same county, or a new business location in another county. This proposed new section also establishes the requirement that a salvage vehicle dealer notify the department if the salvage vehicle dealer closes a business location. Proposed new §221.19 clarifies the requirements when a salvage vehicle dealer changes the business name or the ownership of the license holder. Proposed new §221.20 describes the procedures for renewal of a salvage vehicle dealer license.

Proposed new §221.41 sets out the business location requirements for a salvage vehicle dealer and provides that the salvage vehicle dealer must be in compliance with city, county and state laws. Proposed new §221.42 clarifies that a salvage vehicle dealer may only operate from the location licensed by the department. Proposed new §221.43 provides that a salvage vehicle dealer must post its business hours and must maintain a telephone number that is answered or can receive messages during certain hours. Proposed new §221.44 requires that a salvage vehicle dealer display a sign at the licensed business location. Proposed new §221.45 requires that the salvage vehicle dealer maintain an office at the business location and prohibits the office from being located within a residence, apartment house, hotel, motel or rooming house. Proposed new §221.46 establishes a requirement that the salvage vehicle dealer display its license issued by the department. Proposed new §221.47 requires a salvage vehicle dealer to receive a properly assigned title or other evidence of ownership when acquiring a vehicle. Proposed new §221.48 describes the requirements for scrapping or destroying a vehicle. Proposed new §221.49 makes reference to the applicable statute when a salvage vehicle dealer purchases a component part. Proposed new §221.50 clarifies the procedures for selling flood-damaged vehicles. Proposed new §221.51 establishes notification requirements for identifying salvage motor vehicles and non-repairable motor vehicles when offering such

vehicles for retail sale. This proposed new section also establishes a requirement that purchasers acknowledge that a vehicle is a salvage motor vehicle or a non-repairable motor vehicle at the time of sale. Proposed new §221.52 clarifies the procedures for selling salvage motor vehicles and non-repairable motor vehicles that will be exported from the country. Proposed new §221.53 clarifies the requirements for selling salvage motor vehicles and non-repairable motor vehicles to casual buyers. The identification requirements for these purchasers is aligned with the requirements established for purchasers of motor vehicles.

Proposed new §221.71 clarifies the requirement for maintaining records and for producing those records after receipt of a request from a representative of the department or a peace officer. Proposed new §221.72 describes the record retention requirements for a salvage vehicle dealer. Proposed new §221.73 clarifies what records must be maintained by a salvage vehicle dealer.

Proposed new §221.91 sets out the procedures to be followed by the department when initiating a contested case proceeding against a salvage vehicle dealer. Proposed new §221.92 describes the procedures to be followed when the salvage vehicle dealer submits a request for hearing after the department initiates a contested case proceeding. Proposed new §221.93 establishes procedures after a department decision becomes final. Proposed new §221.94 makes reference to the applicable law governing an appeal of a final decision reached in a contested case proceeding. Proposed new §221.95 describes the cases where the board has delegated authority to issue a final order.

Proposed new §221.111 clarifies the circumstances when the department may deny an application for a salvage vehicle dealer or a salvage vehicle agent license. Proposed new §221.112 lists the grounds upon which the department may revoke or suspend a salvage vehicle dealer license or impose an administrative penalty. Proposed new §221.113 provides that a salvage vehicle dealer's license may be suspended if the department receives an order issued under Family Code, §232.008. Proposed new §221.114 provides that a person may not re-apply for a license before one year after revocation. Proposed new §221.115 discusses the refund of fees when a license has been denied, suspended or revoked.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the new chapter as proposed is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the new chapter.

William P. Harbeson, Director of the Enforcement Division, has certified that there will be no fiscal implications on local economies or overall employment as a result of enforcing or administering the new chapter.

PUBLIC BENEFIT AND COST

Mr. Harbeson has also determined that for each year of the first five years the proposed new chapter is in effect, the public benefit anticipated as a result of enforcing or administering the proposed new chapter will be facilitating the use of the rules because of their reorganization, reducing confusion regarding what licenses are required for certain business activities, and clarifying the locations where salvage businesses may be conducted. There are no anticipated economic costs for persons required to comply with the new chapter as proposed. There will be no adverse economic effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests 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 so does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed new chapter and sections may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731 or by email torules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on October 5, 2015.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §221.1, §221.2

STATUTORY AUTHORITY

The new chapter is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2302.051, which authorizes the board to adopt rules necessary to administer Chapter 2302; and more specifically, Occupations Code, §2302.108, which authorizes the board to adopt disciplinary rules for licensees; and Occupations Code, §2302.354, which authorizes the department to impose an administrative penalty against a person licensed under Chapter 2302 who violates that chapter or a rule or order adopted under that chapter.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2302; and Transportation Code, Chapter 1002.

§221.1. Purpose and Scope.

Transportation Code, §1001.002, provides that the department shall administer and enforce Occupations Code, Chapter 2302. Chapter 2302 provides that a person may not act as a salvage vehicle dealer, salvage vehicle agent, or rebuilder, including storing or displaying vehicles as an agent or escrow agent of an insurance company, unless the department issues that person a license. Chapter 2302 further describes types of salvage business activities that require an endorsement or endorsements on the salvage vehicle dealer license for that person to engage in those activities. This chapter describes the procedures by which a person obtains a salvage vehicle dealer license and the endorsement(s) necessary to engage in the business activities by the salvage vehicle dealer, the rules governing how these license holders must operate, and the procedures by which the department will administer and enforce Occupations Code, Chapter 2302 and this chapter.

§221.2. Definitions.

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

- (1) Board--The Board of the Texas Department of Motor Vehicles.
- (2) Casual sale--A sale as defined by Transportation Code, §501.091.
- (3) Component part--As defined by Occupations Code, §2302.251.

(4) Corporation--A business entity, including a corporation, or limited liability company, but not a sole proprietorship or general partnership, which has filed a certificate of formation or registration with the Texas Secretary of State.

(5) Department--The Texas Department of Motor Vehicles.

(6) Final order authority--The person with authority under Occupations Code, Chapter 2302, or board rules to issue a final order.

(7) License holder--A person that holds a salvage vehicle dealer license issued by the department endorsed in one or more of the classifications listed in Occupations Code, §2302.103.

(8) Major component part--As defined by Transportation Code, §501.091.

(9) Metal recycler--As defined by Transportation Code, §501.091.

(10) Minor component part--As defined by Occupations Code, §2302.251.

(11) New automobile dealer endorsement--An endorsement on the salvage vehicle dealer license issued by the department that allows the license holder to buy and sell salvage motor vehicles and non-repairable motor vehicles that have not been the subject of a retail sale.

(12) Non-repairable motor vehicle--As defined by Transportation Code, §501.091.

(13) Non-repairable record of title--As defined by Transportation Code, §501.091.

(14) Non-repairable vehicle title--As defined by Transportation Code, §501.091.

(15) Out-of-state buyer--As defined by Transportation Code, §501.091.

(16) Out-of-state ownership document--As defined by Transportation Code, §501.091.

(17) Person--A natural person, partnership, corporation, trust, association, estate, or any other legal entity.

(18) Public highway--As defined by Transportation Code, §502.001.

(19) Retail sale--As defined by Occupations Code, §2301.002.

(20) Salvage motor vehicle--As defined by Transportation Code, §501.091.

(21) Salvage pool operator endorsement--An endorsement on the salvage dealer license that allows a person to engage in the business of selling non-repairable motor vehicles or salvage motor vehicles at auction, including wholesale auction, or otherwise.

(22) Salvage record of title--As defined by Transportation Code, §501.091.

(23) Salvage vehicle agent--As defined by Occupations Code, §2302.001.

(24) Salvage vehicle broker endorsement--An endorsement on the salvage vehicle dealer license issued by the department to a person, other than a salvage vehicle dealer holding a used automobile dealer endorsement, new automobile dealer endorsement, salvage vehicle rebuilder endorsement, or a salvage pool operator endorsement, that allows the person:

(A) to offer to sell or buy, or negotiate to sell or buy, salvage motor vehicles or non-repairable motor vehicles owned by a license holder and to be purchased or sold by another license holder; or

(B) act as the agent or representative of a person in performing an act described by subparagraph (A) of this paragraph.

(25) Salvage vehicle dealer--As defined by Transportation Code, §501.091.

(26) Salvage vehicle rebuilder--Defined as "rebuilder," in Transportation Code, §501.091.

(27) Salvage vehicle rebuilder endorsement--An endorsement on the salvage dealer license issued by the department that allows the license holder to acquire and repair, rebuild, or reconstruct for operation on a public highway more than five salvage motor vehicles in a calendar year.

(28) Salvage vehicle title--As defined by Transportation Code, §501.091.

(29) Used automobile dealer endorsement--An endorsement on the salvage vehicle dealer license issued by the department that allows the license holder to buy or sell salvage motor vehicles and non-repairable motor vehicles that have been the subject of a retail sale.

(30) Used part--As defined by Transportation Code, §501.091.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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David D. Duncan

General Counsel

Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665



SUBCHAPTER B. LICENSING

43 TAC §§221.11 - 221.20

STATUTORY AUTHORITY

The new chapter is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2302.051, which authorizes the board to adopt rules necessary to administer Chapter 2302; and more specifically, Occupations Code, §2302.108, which authorizes the board to adopt disciplinary rules for licensees; and Occupations Code, §2302.354, which authorizes the department to impose an administrative penalty against a person licensed under Chapter 2302 who violates that chapter or a rule or order adopted under that chapter.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2302; and Transportation Code, Chapter 1002.

§221.11. License and Endorsement Required.

(a) The department issues a salvage vehicle dealer license with one or more endorsements to that license according to the type of activities intended to be engaged in by the applicant.

(b) A salvage vehicle dealer license may not be issued by the department without at least one of the following endorsements to that salvage vehicle dealer license:

- (1) new automobile dealer endorsement;
- (2) used automobile dealer endorsement;
- (3) salvage pool operator endorsement;
- (4) salvage vehicle broker endorsement; or
- (5) salvage vehicle rebuilder endorsement.

(c) A license holder may not aid or abet another person in acting as a salvage vehicle dealer unless that other person is a license holder of endorsement(s) issued by the department allowing the business activity or activities.

(d) A person may not engage in the business of buying, selling or exchanging motor vehicles that can be titled to operate on public highways, including selling a salvage motor vehicle that has been rebuilt, repaired or reconstructed, unless the person also holds a general distinguishing number issued by the department under Transportation Code, Chapter 503.

(e) A person holding a salvage vehicle dealer license with a used automobile dealer endorsement may rebuild, repair or reconstruct not more than five (5) salvage motor vehicles during a calendar year. The person may sell those rebuilt vehicles, provided the salvage vehicle dealer also holds a general distinguishing number issued by the department under Transportation Code, Chapter 503.

(f) The provisions of this subchapter do not apply to:

(1) a person who purchases not more than five (5) non-repairable or salvage motor vehicles at casual sale in a calendar year from:

- (A) a salvage vehicle dealer;
- (B) a salvage pool operator; or
- (C) an insurance company;

(2) a metal recycler, unless a motor vehicle is sold, transferred, released, or delivered to the metal recycler for the purpose of reuse or resale as a motor vehicle, or as a source of used parts, and is used for that purpose;

(3) a person who casually repairs, rebuilds, or reconstructs more than five (5) salvage motor vehicles in the same calendar year;

(4) a person who is a non-United States resident who purchases non-repairable or salvage motor vehicles for export only;

(5) an agency of the United States, an agency of this state, or a local government;

(6) a financial institution or other secured party that holds a security interest in a motor vehicle and is selling that motor vehicle in the manner provided by law for the forced sale of a motor vehicle;

(7) a receiver, trustee, administrator, executor, guardian, or other person appointed by or acting pursuant to the order of a court;

(8) a person selling an antique passenger car or truck that is at least 25 years old or a collector selling a special interest motor vehicle as defined in Transportation Code, §683.077, if the special interest vehicle is at least 12 years old; and

(9) a licensed auctioneer who, as a bid caller, sells or offers to sell property to the highest bidder at a bona fide auction under the following conditions:

(A) neither legal nor equitable title passes to the auctioneer;

(B) the auction is not held for the purpose of avoiding a provision of Occupations Code, Chapter 2302, or this subchapter; and

(C) the auction is conducted of motor vehicles owned, legally or equitably, by a person who holds a salvage vehicle dealer's license and the auction is conducted at their licensed location or at a location approved by the department.

§221.12. Salvage Vehicle Agent.

(a) A person may only act as a salvage vehicle agent if the person holds a license issued by the department and is acting under the authorization of a salvage vehicle dealer holding a current license issued by the department.

(b) The holder of a salvage vehicle dealer license issued by the department may authorize not more than five (5) persons to operate as salvage vehicle agents under the dealer's license.

(c) A salvage vehicle agent may acquire, sell, or otherwise deal in non-repairable motor vehicles or salvage motor vehicles in this state as directed by the salvage vehicle dealer under whose license the person operates and subject to the authority granted by the department to the salvage vehicle dealer under whose license the salvage vehicle agent operates.

(d) To be authorized to act as a salvage vehicle agent for a salvage vehicle dealer, a person must submit a signed application on a form prescribed by the department and the applicable license fee.

(e) If the license of the salvage vehicle dealer authorizing the salvage vehicle agent is cancelled or revoked, the salvage vehicle agent's license shall be cancelled after notice and opportunity for hearing, effective on the date the salvage vehicle dealer's license is cancelled or revoked.

(f) A salvage vehicle dealer shall notify the department in writing within five days after the salvage vehicle dealer terminates the authority of the salvage vehicle agent to operate under the salvage vehicle dealer's license.

§221.13. License Term and Fees.

(a) The term of a salvage vehicle dealer license, together with all endorsements on that license issued by the department under Occupations Code, Chapter 2302, and this chapter, is 12 months.

(b) The fee for each endorsement is \$120 for the license term. The entire amount of the fee is due at the time of application for the license or at the time the license is renewed.

(c) The fee for a salvage vehicle agent license is \$120 for the license term of the salvage vehicle dealer authorizing the salvage vehicle agent.

(d) The department may prorate the fee for an endorsement added to an existing salvage vehicle dealer license so that the endorsement expires on the same date as the salvage vehicle dealer license.

(e) The department may prorate the fee for a salvage vehicle dealer license to allow the salvage vehicle dealer license to expire on the same day as another license issued by the department under Occupations Code, Chapter 2301; Chapter 2302; or Transportation Code, Chapter 503.

§221.14. License Applications Generally.

(a) A salvage vehicle dealer license may be issued for multiple locations within a single county. A separate license and fee is required for a business location or locations located in another county.

(b) A license applicant must submit a signed application on a form prescribed by the department, provide any required attachments, and remit the required fees at the time of submission of the application.

§221.15. Required License Application Information.

The following information must be provided on each salvage vehicle dealer application:

- (1) the full legal name of the applicant;
- (2) the endorsement or endorsements that are being applied for;
- (3) the full business address, including number, street, municipality, county, and zip code for each location where the applicant will conduct business under the license if each location is in the same county;
- (4) the business telephone number and email address;
- (5) the mailing address;
- (6) a statement acknowledging that the department will consider the applicant's designated mailing address the applicant's last known address for all department communication, including service of process under Subchapter E of this title (relating to Administrative Procedures). The designated mailing address will be considered applicant's last known address until such time that the mailing address is changed in the licensing records of the department after the license holder submits an amendment to change the license holder's mailing address;
- (7) all assumed names as registered with the secretary of state or county clerk, as applicable;
- (8) if applying as a sole proprietor, the social security number, address and telephone number for the sole proprietor;
- (9) if applying as a general partnership, the social security number, address and telephone number for each of the general partners;
- (10) if applying as a limited partnership, limited liability company, or corporation, the full name, social security number, address and telephone number for each member of the limited liability company, each partner, and each officer of the limited partnership or limited liability company;
- (11) the state sales tax number;
- (12) the National Motor Vehicle Title Information System (NMVTIS) number evidencing that the applicant is registered with NMVTIS;
- (13) a statement indicating whether the applicant has previously applied for a license under this chapter or the salvage vehicle dealer licensing laws of another jurisdiction, the result of the previous application, and whether the applicant has ever been the holder of a license issued by the department or another jurisdiction that was revoked, suspended, or subject of an order issued by the board or by another jurisdiction to pay an administrative penalty that remains unpaid;
- (14) a statement indicating whether the applicant is owned, operated, managed, or otherwise controlled by or affiliated with a person, including a family member, corporate officer, entity or shareholder that was the holder of a license issued by the department or by another jurisdiction that was revoked, suspended, or subject of an order issued by the board or by another jurisdiction to pay an administrative penalty that remains unpaid;

(15) a statement indicating whether the applicant, any owner, corporate officer, partner or director has ever been convicted of a felony, and, if so, whether it has been at least three years since the termination of the sentence, parole, mandatory supervision, or probation for the felony conviction;

(16) a statement that the applicant at the time of submitting the application is in compliance, and, after issuance of a license, will remain in compliance, with all ordinances and rules of the municipality or county of each location where the applicant will conduct business; and

(17) an acknowledgement that the applicant understands and is and will remain in compliance with all state and federal laws relating to the licensed activity.

§221.16. Required Attachments to the License Application.

(a) If the applicant is a sole proprietor or general partnership, in addition to the information required by §221.15 of this title (relating to Required License Application Information), the applicant must submit a legible copy of one of the following types of identification that is valid and active at the time of application for the sole proprietor and each of the general partners:

- (1) driver's license or state identification certificate issued by a state or territory of the United States;
- (2) United States or foreign passport;
- (3) United States military identification card;
- (4) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement; or
- (5) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State Identification document.

(b) If the applicant is a limited partnership, limited liability company, or a corporation, the applicant must submit a legible copy of one of the following types of identification that is valid and active at the time of application for each partner of the limited partnership, member of the limited liability company, and for each officer of the corporation:

- (1) driver's license or state identification certificate issued by a state or territory of the United States;
- (2) United States or foreign passport;
- (3) United States military identification card;
- (4) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement; or
- (5) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State Identification document.

(c) If applicant is a corporation, the applicant must submit a copy of the certificate of incorporation issued by the secretary of state or a certificate issued by the jurisdiction where the applicant is incorporated, and a verification that, at the time the application is submitted, all business franchise taxes of the corporation have been paid.

(d) If applicant is a limited partnership, the applicant must submit a copy of the certificate of partnership issued by the secretary of state or a certificate issued by the jurisdiction where the applicant is formed, and verification that, at the time the application is submitted, all business franchise taxes of the limited partnership have been paid.

(e) Upon request by the department, the applicant shall submit documents demonstrating that the applicant owns the real property on

which the business is situated or has a written lease for the property that has a term of not less than the term of the license.

§221.17. License Processing for Military Service Members, Spouses, and Veterans.

The department will process a license, amendment, or renewal application submitted for licensing of a military service member, military spouse, or military veteran in accordance with Occupations Code, Chapter 55.

§221.18. Additional, New, or Closed Location.

(a) If the license holder intends to conduct business at more than one location within the same county, the applicant must:

(1) notify the department no later than 10 days before opening the additional location to amend the license to add an additional location;

(2) acknowledge that the additional location, at the time of submitting the amendment, is and will remain in compliance with all ordinances and rules of the municipality or county for the additional location and board rules; and

(3) obtain approval from the department before conducting business at the additional location.

(b) If the license holder intends to relocate its business to a new location within the same county, the license holder must:

(1) notify the department no later than 10 days before opening the new location to amend the license to add a new location and remove the existing location from the department's records;

(2) acknowledge that the new location, at the time of submitting the amendment, is and will remain in compliance with all ordinances and rules of the municipality or county for the new location and board rules; and

(3) obtain approval from the department before conducting business at the new location.

(c) A license holder must notify the department in writing within 10 days of the closing of a business location.

§221.19. Change of License Holder's Name or Ownership.

(a) A license holder shall notify the department to amend its license within 10 days of a change in the license holder's business name. Upon submission of an amendment to change the business name, the department shall reflect the new business name in the department's records. The dealer shall retain the same salvage vehicle dealer license number except if the business name change is the result of a change in the type of entity being licensed, such as a sole proprietorship becoming a corporation, or if the ownership of the business changes as discussed in subsection (c) of this section.

(b) A salvage vehicle dealer shall notify the department by submitting a request for license amendment 10 days prior to a change of ownership.

(c) Upon notification of a change of more than 50% of the ownership, the department shall:

(1) cancel the existing license and any salvage dealer agent licenses authorized by the salvage vehicle dealer; and

(2) require that an original application and required fees be submitted by the new owner(s). Any of the new owners' salvage vehicle agents must also apply for a new license and submit the applicable fees.

§221.20. License Renewal.

(a) A salvage vehicle dealer license together with its endorsements and any salvage vehicle agent licenses expire on the anniversary of the date of issuance of the salvage vehicle dealer license.

(b) The salvage vehicle dealer license, together with any endorsements and any salvage vehicle agent licenses, may be renewed for an additional period of twelve months upon timely submission of a renewal application on a form approved by the department with all required information and attachments, if applicable, and the required fees. A renewal application is considered "timely" submitted if the renewal application with all required information and attachments, if applicable, and required fee are received by the department on or before the expiration date of the existing license.

(c) The department will send an expiration notice to a salvage vehicle dealer's mailing address at least 30 days before expiration of a license. The expiration notice for salvage vehicle agent licenses will be sent to the authorizing salvage vehicle dealer's mailing address.

(d) Failure by the department to send written notice under this section does not relieve a license holder from timely renewing a license.

(e) A license holder may renew an expired license by submitting a renewal application and paying a late renewal fee of \$60 for each endorsement in addition to the renewal fee described in §221.13(b) of this title (relating to License Term and Fees), if ninety or fewer days have elapsed since the license expired.

(f) A license holder may renew an expired license by submitting a renewal application and paying a late renewal fee of \$120 for each endorsement, in addition to the renewal fee described in §221.13(b), if more than 90 days but less than one year has elapsed since the license expired.

(g) If a license has been expired for a period of one year or longer and the department is not in receipt of a renewal application with all required information and attachments and the renewal fees for each endorsement, the license holder must apply for a new license in the same manner as an applicant for an initial license.

(h) If the department is not in receipt of a renewal application with all required information and attachments and the applicable renewal fee prior to the cancellation date of the license, a salvage vehicle dealer and any salvage vehicle agents may not engage in the activities that require the license until the license has been renewed by the department.

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SUBCHAPTER C. LICENSED OPERATIONS

43 TAC §§221.41 - 221.53

STATUTORY AUTHORITY

The new chapter is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department

of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2302.051, which authorizes the board to adopt rules necessary to administer Chapter 2302; and more specifically, Occupations Code, §2302.108, which authorizes the board to adopt disciplinary rules for licensees; and Occupations Code, §2302.354, which authorizes the department to impose an administrative penalty against a person licensed under Chapter 2302 who violates that chapter or a rule or order adopted under that chapter.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2302; and Transportation Code, Chapter 1002.

§221.41. Location Requirements.

A salvage dealer holding the new automobile dealer endorsement, used automobile dealer endorsement, salvage vehicle rebuilder endorsement or salvage pool operator endorsement must meet the following requirements at each licensed business location and must maintain the following requirements during the entire term of the license.

(1) If the licensed business location is not owned by the license holder, the license holder must maintain a lease that extends through the period for which the license will be issued. That lease agreement must be on an executed lease contract containing at a minimum:

- (A) the names of the lessor and lessee;
- (B) the period of time for which the lease is valid; and
- (C) the street address or legal description of the property, provided that if only a legal description of the property is provided, the license holder must attach a statement that the property description in the lease agreement is the street address identified on the application.

(2) Any business location requirement in this subchapter are in addition to any requirements by city ordinance, county rule, or state law.

§221.42. Operations at Licensed Business Location.

A salvage vehicle dealer may not sell or offer to sell salvage motor vehicles or non-repairable motor vehicles from any location other than the business location that has been approved by the department.

§221.43. Business Hours.

(a) The business hours must be posted at the main entrance of the business's office that is accessible to the public.

(b) The license holder or a bona fide employee of the license holder shall be at the licensed business location during the posted business hours for the purpose of operating the salvage business and allowing the inspection of the business location and records.

(c) If the license holder or a bona fide employee of the license holder is not available to conduct business during the posted business hours due to special circumstances or emergencies, a separate sign must be posted indicating the date and time the license holder or bona fide employee of the license holder will resume operations.

(d) Regardless of the license holder's business hours, the licensee's telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, answering service, or answering machine.

§221.44. Business Sign Requirements.

(a) The license holder must display a permanent sign with letters at least six inches in height showing the license holder's business

name or assumed name as reflected on the license holder's license issued by the department.

(b) The sign must be permanently mounted at the address listed on the license.

§221.45. Business Office.

(a) The license holder's office must be located at the license location in a building with connecting exterior walls on all sides.

(b) A license holder's office structure must comply with all applicable local zoning ordinances and deed restrictions.

(c) A license holder's office may not be located within a residence, apartment house or building, hotel, motel, or rooming house.

(d) A portable-type office structure may qualify as a business office only if the structure meets the requirements of this section and is not a readily moveable trailer or other vehicle.

§221.46. Display of License.

A license holder must display at its business location the original or copy of the license issued by the department at all times in a manner that makes the license easily readable by the public and is displayed in a conspicuous place at each licensed business location for which the license is issued.

§221.47. Evidence of Ownership.

A salvage vehicle dealer must receive a properly assigned salvage vehicle title, salvage record of title, non-repairable vehicle title, non-repairable record of title, or out-of-state ownership document, as applicable, when acquiring a non-repairable motor vehicle or salvage motor vehicle.

§221.48. Scrapped or Destroyed Motor Vehicle.

(a) Within 30 days after a salvage vehicle dealer acquires a non-repairable motor vehicle or salvage motor vehicle for the purpose of scrapping or destroying the motor vehicle, the salvage vehicle dealer shall:

(1) submit to the department a report on a form prescribed by the department stating that the motor vehicle will be scrapped or destroyed and certifying that all license plates and registration stickers have been removed from the motor vehicle; and

(2) surrender to the department the properly assigned ownership document.

(b) Not later than 60 days after the motor vehicle is scrapped or destroyed, the salvage vehicle dealer shall report to the department that the motor vehicle has been scrapped or destroyed.

(c) A salvage vehicle dealer shall maintain records of each motor vehicle that is scrapped or destroyed, as provided by Subchapter D of this title (relating to Records).

(d) License plates and registration stickers of vehicles that will be scrapped or destroyed shall be stored by the salvage vehicle dealer in a secure location until the department acknowledges receipt of the report required by subsection (a) of this section.

(e) The salvage vehicle dealer shall destroy the license plates and registration stickers to the vehicles reported under subsection (a) of this section upon receipt of the acknowledged report from the department.

(f) A vehicle reported to the department under subsection (a) of this section is considered a non-repairable vehicle effective the date of the report.

§221.49. Unique Inventory Number.

Occupations Code, §2302.255, sets out the requirements for a salvage vehicle dealer when the salvage vehicle dealer purchases or takes delivery of a component part.

§221.50. Restrictions on Sales of Flood Damaged Vehicles.

(a) A motor vehicle that is classified as a non-repairable motor vehicle or salvage motor vehicle based solely on flood damage may be sold or transferred only as provided by this section.

(b) A salvage vehicle dealer may sell, transfer, or release a non-repairable motor vehicle or salvage motor vehicle if a non-repairable or salvage vehicle title or a comparable out-of-state ownership document:

- (1) has been issued for the motor vehicle to anyone; or
- (2) has not been issued for the motor vehicle, but only to:
 - (A) an insurance company;
 - (B) a governmental entity;
 - (C) a licensed salvage vehicle dealer;
 - (D) an out-of-state buyer;
 - (E) a metal recycler; or
 - (F) a used automotive parts recycler,

provided a written disclosure has been made that the vehicle has been classified as a non-repairable motor vehicle or salvage motor vehicle based solely on flood damage.

§221.51. Duty to Identify Motor Vehicles Offered for Retail Sale.

(a) A salvage vehicle dealer shall place a sign on each salvage motor vehicle it displays or offers for retail sale that:

- (1) is visible from outside of the salvage motor vehicle;
- (2) contains lettering that is two inches or more in height identifying the vehicle is a salvage motor vehicle; and
- (3) states as follows:

"This is a salvage titled vehicle that cannot be operated on a public highway. If the salvaged vehicle is to be registered in Texas, the purchaser must apply to a county tax assessor-collector's office, surrender the salvage title, submit the required information on repairs that have been made to the vehicle and pay the applicable fees before the vehicle may be titled and/or registered to operate on the public highway."

(b) Upon the retail sale of a salvage motor vehicle, a salvage vehicle dealer shall obtain the purchaser's signature to a disclosure written in eleven point or larger font that states as follows:

"I, (name of purchaser), acknowledge that at the time of purchase, I am aware that:

- (1) The vehicle is titled on a salvage title;
- (2) If I intend to operate the vehicle on a public highway in Texas, I am responsible for applying for a title for this salvage vehicle through a Texas county tax assessor-collector's office accompanied by the required forms showing that repairs have been made to the vehicle;
- (3) I am responsible for paying the applicable fees; and
- (4) I may not drive this salvage vehicle on a public highway until after a titled branded rebuilt salvage and registration have been issued."

(c) A salvage vehicle dealer shall place a sign on each non-repairable motor vehicle it displays or offers for retail sale that:

- (1) is visible from outside of the non-repairable motor vehicle;

(2) contains lettering that is two inches or more in height; and

(3) states as follows:

"This is a non-repairable titled motor vehicle that can never be operated on a public highway of this state or any other state."

(d) Upon the retail sale of a non-repairable motor vehicle, a salvage vehicle dealer shall obtain the purchaser's signature to a disclosure statement written in eleven point or larger font that states as follows: "I, (name of purchaser), acknowledge that at the time of purchase, I am aware that:

(1) The vehicle is a non-repairable vehicle;

(2) This vehicle will never be able to operate on a public highway of this state or any other state and will never be registered to operate on a public highway of this state or any other state.

(3) Before selling this non-repairable vehicle I must have the non-repairable vehicle titled in my name."

(e) A salvage vehicle dealer shall maintain a copy of the written disclosures required by this section as part of its records of sales in accordance with §221.73 of this title (relating to Content of Records).

(f) The notice requirements of subsections (a) and (c) can be met if the salvage vehicle dealer displays a single notice or notices if all of the vehicles being offered for retail sale by the salvage vehicle dealer are salvage motor vehicles or non-repairable motor vehicles.

(g) If the salvage vehicle dealer conducts a retail sale of a salvage motor vehicle or a non-repairable motor vehicle in Spanish or other foreign language, the notices and disclosures required by this section shall be in that language.

§221.52. Export-only Sales.

(a) A license holder may sell a non-repairable motor vehicle or a salvage motor vehicle to a person who resides in a jurisdiction outside the United States only as provided by Transportation Code, §501.099.

(b) A license holder may accept any of the following types of government-issued photo identification documents to establish that the purchaser resides outside the United States:

- (1) passport;
- (2) driver's license;
- (3) consular identity document;
- (4) national identification certificate or identity document;

or

(5) other photo identification card issued by the jurisdiction where the purchaser resides that contains the name, address, and date of birth of the purchaser.

(c) A legible copy of the photo identification document must be maintained in the records of the license holder for a period of 48 months after the sale of a salvage motor vehicle or a non-repairable motor vehicle for "export-only."

(d) The limitation on the number of casual sales that may be made to a person under §221.53 of this title (relating to Casual Sales) does not apply to sales to a person who resides in a jurisdiction outside the United States and who purchases salvage motor vehicles and non-repairable motor vehicles for "export-only."

§221.53. Casual Sales.

(a) A license holder may not make more than five (5) casual sales of salvage motor vehicles or non-repairable motor vehicles during a calendar year to the same person.

(b) A license holder must maintain records of each casual sale made during the previous 36 months, as provided by §221.72 of this title (relating to Record Retention). Such records must contain the following information regarding each casual sale:

(1) the complete name, address and phone number of the purchaser;

(2) a copy of one of the following photo identification documents for the purchaser:

(A) driver's license or state identification certificate issued by a state or territory of the United States;

(B) United States or foreign passport;

(C) United States military identification card;

(D) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement; or

(E) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State Identification document; and

(3) the year, make, model, color and vehicle identification number for the salvage motor vehicle or non-repairable motor vehicle.

(c) A person that purchases a salvage motor vehicle or a non-repairable motor vehicle through a casual sale may not sell that salvage motor vehicle or non-repairable motor vehicle until the salvage vehicle title, salvage record or title, non-repairable vehicle title or non-repairable record of title, as applicable, is in the person's name.

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SUBCHAPTER D. RECORDS

43 TAC §§221.71 - 221.73

STATUTORY AUTHORITY

The new chapter is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2302.051, which authorizes the board to adopt rules necessary to administer Chapter 2302; and more specifically, Occupations Code, §2302.108, which authorizes the board to adopt disciplinary rules for licensees; and Occupations Code, §2302.354, which authorizes the department to impose an administrative penalty against a person licensed under Chapter 2302 who violates that chapter or a rule or order adopted under that chapter.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2302; and Transportation Code, Chapter 1002.

§221.71. Records; Generally.

(a) A salvage vehicle dealer shall maintain a record of each salvage motor vehicle and non-repairable motor vehicle purchased, sold or exchanged by the salvage vehicle dealer.

(b) A salvage vehicle dealer's records must be maintained on the licensed business location.

(c) Any records required to be maintained by a license holder may be maintained in an electronic format if the record can be reviewed and printed at the licensed business location upon request by a representative of the department or a peace officer at the time the requestor is at the business location.

(d) A salvage vehicle dealer must make records available for review and copying upon request by a representative of the department or by a peace officer. A request for records may be made by the department or a peace officer in person, or by mail or by electronic document transfer.

(e) Upon receipt of a request for review of records sent by mail or electronic document transfer from the department or a peace officer, a salvage vehicle dealer must produce copies of specified records to the requestor within 10 calendar days of receipt of the request by mail or electronic document transfer.

(f) Occupations Code, §2302.254, establishes the requirements that a salvage vehicle dealer maintain a record of an inventory of component parts purchased by or delivered to the salvage vehicle dealer.

§221.72. Record Retention.

(a) A salvage vehicle dealer must retain on the licensed business location, or have electronic access on the licensed business location of records stored electronically, a complete record of all purchases and sales of salvage motor vehicles and non-repairable motor vehicles for a minimum period of 36 months from the date of the transaction.

(b) A salvage vehicle dealer shall maintain on the licensed business location a record of each vehicle that is scrapped or destroyed, and a photocopy of the front and back of all salvage vehicle titles and non-repairable vehicle titles, or a photocopy or electronic copy of all salvage records of title, and non-repairable records of title, and, if applicable, a photocopy of any out-of-state evidence of ownership surrendered to the department, until the fourth anniversary of the date the report was acknowledged as received by the department.

§221.73. Content of Records.

(a) The records of a salvage vehicle dealer for purchases and sales shall include:

(1) the date of purchase of the salvage motor vehicle, or non-repairable motor vehicle;

(2) the name and address of the person that sold the salvage motor vehicle or non-repairable motor vehicle to the salvage vehicle dealer;

(3) if the person that sold the salvage motor vehicle or non-repairable motor vehicle to the salvage motor vehicle dealer is not an insurance company or a salvage pool operator, a photocopy of one of the following photo identification documents of the person that sold the salvage motor vehicle or non-repairable motor vehicle to the salvage vehicle dealer:

(A) driver's license or state identification certificate issued by a state or territory of the United States;

(B) United States or foreign passport;

(C) United States military identification card;

(D) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement; or

(E) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State Identification document;

(4) a description of the salvage motor vehicle or non-repairable motor vehicle, including the model, year, make, and vehicle identification number, if applicable;

(5) the ownership document number and state of issuance of the salvage motor vehicle or non-repairable motor vehicle ownership document, if applicable;

(6) a copy of the salvage record of title or non-repairable record of title, if applicable, or a copy of the front and back of the ownership document for the salvage motor vehicle or non-repairable motor vehicle;

(7) a copy of the form if the ownership document has been surrendered to the department; and

(8) any evidence indicating that the motor vehicle was scrapped or destroyed.

(b) If the salvage motor vehicle has been rebuilt, repaired, or reconstructed by the salvage vehicle dealer the salvage vehicle dealer's records must also include a form prescribed by the department for "Rebuilt Vehicle Statement," listing all repairs made to the motor vehicle, and, when required to be completed, a form prescribed by the department for "Component Part(s) Bill of Sale."

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SUBCHAPTER E. ADMINISTRATIVE PROCEDURES

43 TAC §§221.91 - 221.95

STATUTORY AUTHORITY

The new chapter is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2302.051, which authorizes the board to adopt rules necessary to administer Chapter 2302; and more specifically, Occupations Code, §2302.108, which authorizes the board to adopt disciplinary rules for licensees; and Occupations Code, §2302.354, which authorizes the department to impose an administrative penalty against a person licensed under Chapter 2302 who violates that chapter or a rule or order adopted under that chapter.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2302; and Transportation Code, Chapter 1002.

§221.91. *Notice of Department Decision.*

(a) Upon a determination that an application for a license issued under Occupations Code, Chapter 2302, and this chapter should be denied, or that a license be revoked or suspended, or that administrative sanctions should be imposed based on alleged violations of Occupations Code, Chapter 2302, or this chapter, the department shall issue and mail, by certified mail, a Notice of Department Decision to the applicant's, license holder's or person's last known mailing address, as reflected in the department's licensing records.

(b) The Notice of Department Decision includes a statement:

(1) that describes the department decision and its effective date;

(2) that describes each alleged violation;

(3) that describes each administrative sanction being proposed;

(4) which sets out the legal basis for each administrative sanction;

(5) informing the license applicant, license holder or other person of the right to request a hearing;

(6) setting forth the procedures for requesting a hearing, including the period during which a request for a hearing must be received by the department; and

(7) informing the license applicant, license holder, or other person that the proposed decision and administrative sanctions in the Notice of Department Decision will become final on the date specified if the license applicant, license holder, or other person fails to timely request a hearing.

(c) A request for an administrative hearing under this section must be made in writing and received by the department within 26 days of the date the Notice of Department Decision is mailed by the department.

(d) If the license applicant, license holder, or person does not make a timely request for hearing or enter into a settlement agreement before the 27th day after the date the Notice of Department Decision is mailed, the matter becomes final in accordance with the Government Code, Chapter 2001.

§221.92. *Notice of Hearing.*

(a) If a request for administrative hearing is timely received, the department shall set a hearing with the State Office of Administrative Hearings and give notice to the license applicant, license holder or other person of the date, time and location where the hearing will be held.

(b) The hearing shall be conducted under the provisions set forth in this chapter and by an administrative law judge of the State Office of Administrative Hearings.

§221.93. *Final Decisions and Orders; Motions for Rehearing.*

(a) If a department decision becomes final under a Notice of Department Decision issued under §221.91 of this title (relating to Notice of Department Decision), the matter will be forwarded to the final order authority for issuance of a final order incorporating the decisions, findings and administrative sanctions imposed by the Notice of Department Decision. The department will send a copy of the final order to the license applicant, license holder, or other person.

(b) The provisions of Government Code, Chapter 2001, Subchapter F, govern the issuance of a final order issued under this sub-

chapter and motions for rehearing filed in response to issuance of a final order.

§221.94. Judicial Review of Final Order.

The provisions of Government Code, Chapter 2001, Subchapter G, govern the appeal of a final order issued under this subchapter.

§221.95. Delegation of Final Order Authority.

(a) In accordance with Transportation Code, §1003.005(b), in cases brought under Occupations Code, Chapter 2302, the director of the division that regulates the distribution and sale of motor vehicles is authorized to issue a final order in a case without a decision on the merits, including, but not limited to a case resolved:

- (1) by settlement;
- (2) by agreed order;
- (3) by withdrawal of the complaint;
- (4) by dismissal for want of prosecution;
- (5) by dismissal for want of jurisdiction;
- (6) by summary judgment or summary disposition;
- (7) by default judgment; or
- (8) when a party waives opportunity for a hearing.

(b) In contested cases in which the board has delegated final order authority under subsection (a) of this section, a motion for rehearing shall be filed with and decided by the final order authority delegate.

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SUBCHAPTER F. ADMINISTRATIVE SANCTIONS

43 TAC §§221.111 - 221.115

STATUTORY AUTHORITY

The new chapter is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2302.051, which authorizes the board to adopt rules necessary to administer Chapter 2302; and more specifically, Occupations Code, §2302.108, which authorizes the board to adopt disciplinary rules for licensees; and Occupations Code, §2302.354, which authorizes the department to impose an administrative penalty against a person licensed under Chapter 2302 who violates that chapter or a rule or order adopted under that chapter.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2302; and Transportation Code, Chapter 1002.

§221.111. Denial of License.

(a) The department shall deny issuance of a salvage vehicle dealer license or a salvage vehicle agent license, if:

(1) all the information required on the application is not complete;

(2) the applicant or any of its owners, officers, or directors made a false statement or material misrepresentation or a material omission on the application;

(3) the applicant or any of its owners, officers, or directors have been convicted of a felony for which less than three (3) years have elapsed since the termination of the sentence, parole, mandatory supervision, or probation;

(4) the applicant's or any of its owners', officers', or directors' previous salvage vehicle dealer or salvage vehicle agent license was revoked and the first anniversary of the date of revocation has not occurred;

(5) the applicant is an immediate family member, such as a spouse, child, parent, grandparent, niece, nephew, uncle, or aunt, of a previously licensed salvage vehicle dealer whose license has been revoked, and the business location is the same as the location of the revoked salvage vehicle dealer; or

(6) the applicant, owner, officer or director is delinquent in any court ordered obligation to pay child support.

(b) If the application is denied, the applicant may request an administrative hearing in the manner specified in §221.91 of this title (relating to Notice of Department Decision).

§221.112. Suspension, Revocation and Administrative Penalties.

The department may suspend or revoke a license or impose an administrative penalty if the license holder:

(1) fails to maintain the qualifications for a license;

(2) violates any law relating to the purchase, sale, exchange, storage of salvage motor vehicles and non-repairable motor vehicles;

(3) willfully defrauds a purchaser;

(4) fails to maintain purchase, sales, and inventory records as required by Occupations Code, Chapter 2302, or this chapter;

(5) refuses to permit, or fails to comply with a request by the department or a peace officer to examine, during normal business hours, the license holder's records as required by Occupations Code, Chapter 2302 or this chapter;

(6) engages in business without the required endorsement;

(7) engages in business as a salvage vehicle dealer at a location for which a license has not been issued by the department;

(8) fails to notify the department of a change of address or location within 10 days of such change by requesting and obtaining from the department an amendment to the salvage vehicle dealer's license;

(9) fails to notify the department of a change of the salvage vehicle dealer's name or salvage vehicle dealer's ownership within 10 days of such change by requesting and obtaining from the department an amendment to the salvage vehicle dealer's license;

(10) fails to notify the department of the termination of a salvage vehicle agent within 10 days after such termination;

(11) fails to remain regularly and actively engaged in the business for which the salvage vehicle dealer license is issued;

(12) sells more than five (5) non-repairable motor vehicles or salvage motor vehicles to the same person in a casual sale during a calendar year;

(13) violates any of the provision of Occupations Code, Chapter 2302, Transportation Code, Chapters 501, 502, or 503, or any board rule or order promulgated under those statutes;

(14) uses or allows use of the salvage vehicle dealer's or salvage vehicle agent's license or business location for the purpose of the license holder or another person avoiding Occupations Code, Chapter 2302, Transportation Code, Chapters 501, 502 or 503, or any board rule or order promulgated under those statutes;

(15) violates any law, ordinance, rule or regulation governing the purchase, sale, exchange or storage of salvage motor vehicles, and non-repairable motor vehicles;

(16) sells or offers for sale non-repairable motor vehicles or salvage motor vehicles from any location other than a licensed salvage vehicle dealer's business location that has been approved by the department;

(17) is convicted of a felony after initial issuance or renewal of the salvage vehicle dealer or salvage vehicle agent license, or less than three (3) years have elapsed since the termination of the sentence, parole, mandatory supervision, or probation for a felony conviction of the license holder;

(18) makes a false statement, material misrepresentation, or material omission in any application or other information filed with the department;

(19) fails to timely remit payment for administrative penalties imposed by the department under Occupations Code, §2302.354 and this section;

(20) engages in business without a license required under Occupations Code, Chapters 2301, or Transportation Code, Chapter 503;

(21) operates a salvage motor vehicle or a non-repairable motor vehicle on the public highways or allows another person to operate a salvage motor vehicle or a non-repairable motor vehicle on public highways;

(22) dismantles a salvage motor vehicle or non-repairable motor vehicle; or

(23) deals in used automotive parts as more than an incidental part of the salvage vehicle dealer's primary business.

§221.113. Suspension or Refusal to Renew Due to Failure to Pay Court-ordered Child Support.

(a) On receipt of a final order suspending a license, issued under Family Code, §232.008, the department will suspend or refuse to renew a salvage vehicle dealer's or salvage vehicle agent's license issued under this chapter.

(b) The department will charge an administrative fee of \$50 to reinstate the salvage vehicle dealer's or salvage vehicle agent's license who was the subject of an order suspending the license under this section.

§221.114. Re-application after Revocation of License.

A person whose license is revoked may not apply for a new license before the first anniversary of the date of the revocation.

§221.115. Refund of Fees.

The department will not refund fees paid if a license is denied, suspended or revoked.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2015.

TRD-201503317

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: October 4, 2015

For further information, please call: (512) 465-5665

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 13. FINANCIAL PLANNING SUBCHAPTER M. TOTAL RESEARCH EXPENDITURES

19 TAC §§13.300 - 13.304

The Texas Higher Education Coordinating Board withdraws proposed new §§13.300 - 13.304 which appeared in the July 17, 2015, issue of the *Texas Register* (40 TexReg 4515).

Filed with the Office of the Secretary of State on August 20, 2015.

TRD-201503246

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: August 20, 2015

For further information, please call: (512) 427-6114



TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 72. APPLICATIONS AND APPLICANTS

22 TAC §72.2

The Texas Board of Chiropractic Examiners withdraws the proposed amendment to §72.2 which appeared in the July 17, 2015, issue of the *Texas Register* (40 TexReg 4518).

Filed with the Office of the Secretary of State on August 21, 2015.

TRD-201503308

Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

Effective date: August 21, 2015

For further information, please call: (512) 305-6715



CHAPTER 78. RULES OF PRACTICE

22 TAC §78.8

The Texas Board of Chiropractic Examiners withdraws the proposed amendment to §78.8 which appeared in the July 17, 2015, issue of the *Texas Register* (40 TexReg 4519).

Filed with the Office of the Secretary of State on August 21, 2015.

TRD-201503309

Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

Effective date: August 21, 2015

For further information, please call: (512) 305-6715



CHAPTER 80. GENERAL REGULATORY PROVISIONS

22 TAC §80.5

The Texas Board of Chiropractic Examiners withdraws the proposed amendment to §80.5 which appeared in the July 17, 2015, issue of the *Texas Register* (40 TexReg 4524).

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TRD-201503307

Bryan Snoddy

General Counsel

Texas Board of Chiropractic Examiners

Effective date: August 21, 2015

For further information, please call: (512) 305-6715



PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 102. FEES

22 TAC §102.1

The State Board of Dental Examiners withdraws proposed amended §102.1, which appeared in the June 19, 2015, issue of the *Texas Register* (40 TexReg 3741).

Filed with the Office of the Secretary of State on August 17, 2015.

TRD-201503162

Nycia Deal

General Counsel

State Board of Dental Examiners

Effective date: August 17, 2015

For further information, please call: (512) 475-0977



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 362. DEFINITIONS

40 TAC §362.1

The Texas Board of Occupational Therapy Examiners withdraws the proposed amended §362.1 which appeared in the May 29, 2015, issue of the *Texas Register* (40 TexReg 3102).

Filed with the Office of the Secretary of State on August 19, 2015.

TRD-201503226

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: August 19, 2015

For further information, please call: (512) 305-6900



CHAPTER 372. PROVISION OF SERVICES

40 TAC §372.1

The Texas Board of Occupational Therapy Examiners withdraws the proposed amended §372.1 which appeared in the May 29, 2015, issue of the *Texas Register* (40 TexReg 3106).

Filed with the Office of the Secretary of State on August 19, 2015.

TRD-201503227

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: August 19, 2015

For further information, please call: (512) 305-6900



CHAPTER 373. SUPERVISION

40 TAC §373.1

The Texas Board of Occupational Therapy Examiners withdraws the proposed amended §373.1 which appeared in the May 29, 2015, issue of the *Texas Register* (40 TexReg 3108).

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TRD-201503228

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: August 19, 2015

For further information, please call: (512) 305-6900



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER I. SALVAGE VEHICLE DEALERS

43 TAC §217.193

The Texas Department of Motor Vehicles withdraws the proposed new §217.193 which appeared in the June 19, 2015, issue of the *Texas Register* (43 TexReg 3813).

Filed with the Office of the Secretary of State on August 21, 2015.

TRD-201503304

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Effective date: August 21, 2015

For further information, please call: (512) 465-5665



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

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 §2.106

The Finance Commission of Texas (commission) adopts new 7 TAC §2.106, concerning Denial, Suspension, or Revocation Based on Criminal History, for residential mortgage loan originators applying for licensure with the Office of Consumer Credit Commissioner (OCCC).

The commission adopts the amendments without changes to the proposed text as published in the July 3, 2015, issue of the *Texas Register* (40 TexReg 4281).

The commission received no written comments on the proposal.

In general, the purpose of the adopted new rule is to implement Texas Occupations Code, §53.025 by providing guidelines concerning the OCCC's review of criminal convictions for residential mortgage loan originator applicants and licensees under the OCCC's regulatory jurisdiction. The rule also implements Texas Government Code, §411.095, as amended by Senate Bill (SB) 1075 (effective September 1, 2015), relating to criminal history record information obtained by the OCCC. In addition, the rule implements Texas Finance Code, §180.055 and §180.201, which describe grounds for denying, suspending, or revoking a residential mortgage loan originator license.

Residential mortgage loan originators (RMLOs) are licensed in Texas under Chapter 180 of the Texas Finance Code. §180.054 currently authorizes the OCCC to collect criminal history record information regarding RMLOs using the Nationwide Mortgage Licensing System and Registry (NMLS) as a channeling agent. To provide consistency, SB 1075 amends Texas Government Code, §411.095 by adding Chapter 180 of the Finance Code to the list of chapters under which the OCCC may obtain criminal history record information from the Department of Public Safety (DPS)

relating to an individual applying for or holding a license with the OCCC under Chapter 180.

Adopted new §2.106 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of an RMLO license.

Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose.

Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the licensed occupation of an RMLO under the OCCC's jurisdiction. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being an RMLO, including the reasons the crimes relate to the licensed occupation, as provided by Texas Occupations Code, §53.025(a). Subsection (c)(2) contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a licensee, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or licensee unfit, as provided by Texas Occupations Code, §53.023.

Subsection (d) identifies crimes related to financial responsibility, character, or general fitness that may be used as the basis for a denial, suspension, or revocation action by the OCCC.

Subsection (e) explains that the OCCC will revoke a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

Subsection (f) identifies other grounds for denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

The new rule is adopted under Texas Occupations Code, §53.025, which authorizes each licensing authority to issue guidelines relating to the reasons a particular crime is considered to relate to a particular license and any other criteria that affect the decisions of the licensing authority. The new rule is also adopted under Texas Government Code, §411.095, as amended by SB 1075, which authorizes the OCCC to obtain criminal history record information from the DPS that relates to a Chapter 180 applicant or licensee.

Additionally, the new rule is adopted under Texas Finance Code, §180.055 and §180.201, which describe grounds for denying, suspending, or revoking an RMLO license. The new rule is also

adopted under Texas Finance Code, §180.054, which authorizes the OCCC to collect criminal history information regarding RMLOs using the Nationwide Mortgage Licensing System and Registry (NMLS) as a channeling agent, and under Texas Finance Code, §180.061, which authorizes the commission to adopt rules establishing requirements for conducting background checks and other activities necessary for participation in the NMLS.

The statutory provisions affected by the adopted new rule are contained in Texas Occupations Code, Chapter 53, Texas Government Code, §411.095, and Texas Finance Code, Chapters 180, 342, 347, 348, and 351.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 2015.

TRD-201503331

Leslie L. Pettijohn

Consumer Credit Commissioner

Finance Commission of Texas

Effective date: September 10, 2015

Proposal publication date: July 3, 2015

For further information, please call: (512) 936-7621



PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 88. CONSUMER DEBT MANAGEMENT SERVICES

SUBCHAPTER A. REGISTRATION PROCEDURES

7 TAC §§88.102, 88.107, 88.110

The Finance Commission of Texas (commission) adopts amendments to 7 TAC §88.102, concerning Filing of New Application, and §88.107, concerning Fees. The commission also adopts new 7 TAC §88.110, concerning Denial, Suspension, or Revocation Based on Criminal History, for debt management services providers.

The commission adopts the amendments and new rule without changes to the proposed text as published in the July 3, 2015, issue of the *Texas Register* (40 TexReg 4284).

The commission received no written comments on the proposal.

In general, the purpose of the adoption is to implement Texas Government Code, §411.095, as amended by Senate Bill (SB) 1075 (effective September 1, 2015), relating to criminal history record information obtained by the Office of Consumer Credit Commissioner (OCCC). The adoption also implements Texas Finance Code, §14.152, as amended by SB 1075, which authorizes the OCCC to require applicants for a debt management services provider registration to provide fingerprints. The adoption implements Texas Finance Code, §394.204, which describes the eligibility requirements that an applicant must satisfy before obtaining a debt management services provider registration, and describes the grounds for denying, suspending, or revoking a registration. In addition, the adoption implements Texas Occu-

pations Code, §53.025 by providing guidelines concerning the OCCC's review of criminal convictions for debt management services provider applicants and registrants.

Debt management services providers are registered in Texas under Chapter 394 of the Texas Finance Code. SB 1075 amends Texas Government Code, §411.095 by adding Chapter 394 of the Finance Code to the list of chapters under which the OCCC may obtain criminal history record information from the Department of Public Safety (DPS) relating to an individual applying for or holding a registration.

The amendments to §88.102, concerning Filing of New Application, add paragraph (9) to subsection (b), describing which individuals must submit fingerprints as part of a registration application in order to comply with Texas Finance Code, §14.152, as amended by SB 1075. In particular, paragraph (9)(A) explains that each principal party must provide a set of fingerprints.

The amendments to §88.107, concerning Fees, add a subsection explaining that the applicant must pay a fee to a party designated by DPS for processing fingerprints.

Adopted new §88.110 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of a debt management services provider registration.

Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose.

Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the registered occupation of a debt management services provider. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a debt management services provider, including the reasons the crimes relate to the occupation, as provided by Texas Occupations Code, §53.025(a). Subsection (c)(2) contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a registrant, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or registrant unfit, as provided by Texas Occupations Code, §53.023.

Subsection (d) identifies offenses involving moral turpitude that may be used as the basis for a denial, suspension, or revocation action by the OCCC. This provision is based on Texas Finance Code, §394.204(i)(1), which authorizes the OCCC to deny an application based on offenses related to moral turpitude.

Subsection (e) explains that the OCCC will revoke a registration on the registrant's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

Subsection (f) identifies other grounds for denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

The rule changes are adopted under Texas Government Code, §411.095, as amended by SB 1075. The rule changes are also adopted under Texas Finance Code, §14.152, as amended by SB 1075, which authorizes the OCCC to require applicants for

a debt management services provider registration to provide fingerprints. In addition, the rule changes are adopted under Texas Occupations Code, §53.025, which authorizes each licensing authority to issue guidelines relating to the reasons a particular crime is considered to relate to a particular license or registration and any other criteria that affect the decisions of the licensing authority.

Additionally, the rule changes are adopted under Texas Finance Code, §394.204, which describes the eligibility requirements that an applicant must satisfy before obtaining a debt management services provider registration, and describes the grounds for denying, suspending, or revoking a registration. The rule changes are also adopted under Texas Finance Code, §394.214, which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C.

The statutory provisions affected by the adoption are contained in Texas Occupations Code, Chapter 53, Texas Government Code, §411.095, and Texas Finance Code, §14.152 and Chapter 394, Subchapter C.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 2015.

TRD-201503333

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Effective date: September 10, 2015

Proposal publication date: July 3, 2015

For further information, please call: (512) 936-7621



TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 7. LOCAL RECORDS

SUBCHAPTER D. RECORDS RETENTION SCHEDULES

13 TAC §7.125

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 13 TAC §7.125(a)(1) is not included in the print version of the Texas Register. The figure is available in the html version of the September 4, 2015, issue of the Texas Register online.)

The Texas State Library and Archives Commission adopts amendments to 13 TAC §7.125, concerning Records Retention Schedules, with changes to the proposed text as published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2368). The amendment affects subsection (a)(1) regarding local government retention schedule for Records Common to All Local Governments (Schedule GR) pursuant to the Government Code §441.158(a). The amendment makes revisions necessary to keep the schedule up-to-date with current laws, administrative rules, and improve retention of public records.

Comments were received regarding the proposed amendment during the comment period. These comments and the resulting changes are identified in this preamble.

Comment: An official from City of Fort Worth requested reconsideration of the increase in retention period for GR1000-26b. The official stated that an additional year of recordkeeping and the associated costs are an added burden that does not appear to be justified or necessary.

Response: Agency understands the issue but will not be making a change to the retention period. The Commission increased the retention period due to a petition from other local entities and their concern that correspondence of elected officials and governmental bodies were not being retained long enough to adequately document actions and decision-making processes of Texas governments.

Comment: An official from City of Dallas recommended the removal of the new proposed record series GR1000-34c Public Information Act Requests - Withdrawn requests, and that withdrawn requests should be incorporated into existing record series, GR1000-34a Public Information Act Requests - Non-empted Records.

Response: Agency agrees with recommendation and revised retention and description of GR1000-34a to include withdrawn requests.

Comment: An official from City of Dallas recommended deleting GR1000-40d Records Management Records - Plans and similar documents establishing policies and procedures because it is covered by GR1000-38 Policy and Procedure Documentation.

Response: Agency does not recommend change. Records management policy and procedure documentation is often overlooked. We would like to maintain this as separate records series to highlight the importance of these records.

Comment: An official from Lubbock County recommended that we revise the retention period for GR1000-51 Speeches, Papers, and Presentations to make it more clear on when a speech can be disposed.

Response: Agency agrees with recommendation and revised retention period.

Comment: An official from City of Fort Worth recommended adding a retention note to GR1000-53 to reference other litigation related record series.

Response: Agency agrees with recommendation and added retention note.

Comment: An official from City of Dallas recommended the removal of the new proposed record series GR1025-33 Monetary Transport Records and that these records be incorporated into existing record series, GR1025-28 Banking Records.

Response: Agency agrees with recommendation and revised record description for GR1025-28.

Comment: An official from City of Fort Worth recommended revision of retention period for GR1050-21 Job Evaluations for consistency and clarity.

Response: Agency agrees with recommendation and revised retention period.

Comment: An official from City of Dallas recommended revision of retention period for GR1050-14 Employment Applica-

tions. The official stated that each record series should have only one retention value to be applied uniformly.

Response: Agency agrees with recommendation and revised record series.

Comment: An official from City of Dallas found alignment issues with GR1050-22b Medical Exposure Reports.

Response: Agency corrected alignment error.

Comment: An attorney from Lloyd Gosselink Rochelle & Townsend, P.C. recommended the creation of a new records series concerning GR1075-16 Construction Project Records.

Response: Agency recognizes petition and will discuss the addition of this records series at a meeting later this year.

Comment: An official from City of Dallas recommended deleting GR5750-07 Disaster Preparedness and Recovery Plans because it is covered by GR1000-38 Policy and Procedure Documentation.

Response: Agency does not recommend change. Agency feels this series has the potential to have statutory changes that may require a different retention period in the future. We recommend maintaining as separate record series.

The amended section is adopted 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.

§7.125. *Records Retention Schedules.*

(a) The following records retention schedules, required to be adopted by rule under Government Code §441.158(a) are adopted.

(1) Local Schedule GR: Records Common to All Local Governments, 5th Edition.

Figure: 13 TAC §7.125(a)(1)

(2) Local Schedule PW: Records of Public Works and Other Government Services, 2nd Edition.

Figure: 13 TAC §7.125(a)(2) (No change.)

(3) Local Schedule CC: Records of County Clerks, 3rd Edition.

Figure: 13 TAC §7.125(a)(3) (No change.)

(4) Local Schedule DC: Records of District Clerks, 3rd Edition.

Figure: 13 TAC §7.125(a)(4) (No change.)

(5) Local Schedule PS: Records of Public Safety Agencies, 3rd Edition.

Figure: 13 TAC §7.125(a)(5) (No change.)

(6) Local Schedule SD: Records of Public School Districts, Revised 2nd Edition.

Figure: 13 TAC §7.125(a)(6) (No change.)

(7) Local Schedule JC: Records of Public Junior Colleges, 2nd Edition.

Figure: 13 TAC §7.125(a)(7) (No change.)

(8) Local Schedule LC: Records of Justice and Municipal Courts, 2nd Edition.

Figure: 13 TAC §7.125(a)(8) (No change.)

(9) Local Schedule TX: Records of Property Taxation, 3rd Edition.

Figure: 13 TAC §7.125(a)(9) (No change.)

(10) Local Schedule EL: Records of Elections and Voter Registration, 3rd Edition.

Figure: 13 TAC §7.125(a)(10) (No change.)

(11) Local Schedule HR: Records of Public Health Agencies, 2nd Edition.

Figure: 13 TAC §7.125(a)(11) (No change.)

(12) Local Schedule UT: Records of Utility Services, 2nd Edition.

Figure: 13 TAC §7.125(a)(12) (No change.)

(b) The retention periods in the records retention schedules adopted under subsection (a) of this section serve to amend and replace the retention periods in all editions of the county records manual published by the commission between 1978 and 1988. The retention periods in the manual, which were validated and continued in effect by Government Code §441.159, until amended, are now without effect.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 2015.

TRD-201503209

Edward Seidenberg

Deputy Director

Texas State Library and Archives Commission

Effective date: September 15, 2015

Proposal publication date: May 1, 2015

For further information, please call: (512) 463-5459

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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 S. WHOLESALE MARKETS

16 TAC §25.503

The Public Utility Commission of Texas (commission) adopts amendments to §25.503, relating to Oversight of Wholesale Market Participants, with changes to the proposed text as published in the June 5, 2015, issue of the *Texas Register* (40 TexReg 3294). The primary purpose of the amendments is to update the process used by the Electric Reliability Council of Texas (ERCOT) to meet its obligation to monitor compliance by market participants with the ERCOT wholesale market reliability-related requirements. The rule as originally adopted by the commission required ERCOT to develop and submit for commission approval an internal process to monitor occurrences of non-compliance with the ERCOT Protocols that could impede ERCOT operations or represent a risk to system security. In response to this requirement, ERCOT staff developed the ERCOT Compliance Process. The Compliance Process was approved by the com-

mission in 2006. The Compliance Process was originally overseen by the ERCOT Compliance Office (ERCOT Compliance). Based on developments since 2006, ERCOT Compliance was eliminated as part of ERCOT. The functions formerly overseen by ERCOT Compliance were assigned to the Texas Reliability Entity (Texas RE), which was formed as a stand-alone, Texas non-profit corporation in 2010. ERCOT and the Texas RE continue to follow the relevant portions of the ERCOT Compliance Process. It is necessary to amend §25.503 to reflect the changes that have occurred since the rule was adopted in 2004.

PURA §39.151(d) permits the commission to delegate monitoring and enforcement of rules related to the reliability of the regional electrical network to the ERCOT independent system operator. The rule as adopted will continue the delegation that exists under the current rule, but will restructure it by requiring ERCOT and the commission to contract with an independent third party to ensure that the actions of the ERCOT independent system operator itself are reviewed in the same objective manner as the actions of other market participants. In order to ensure transparency, the commission will utilize applicable state contracting procedures in selecting the Reliability Monitor.

Under the rule as adopted, the commission and ERCOT will enter in a contract with an entity selected by the commission to be the commission's Reliability Monitor. While ERCOT will continue to fund the operations of the Reliability Monitor from the system administrative fee, the amendments clarify that the Reliability Monitor works under the direction and supervision of the commission. The adopted rule also outlines the criteria to be used by the commission in selecting the Reliability Monitor.

The commission received comments on the proposed amendments from Luminant Energy Company, LLC, Luminant Generation Company, LLC and Exelon Corp. (collectively Joint Commenters), Texas Competitive Power Advocates (TCPA), the Lower Colorado River Authority (LCRA), LCRA Transmission Services Corporation (LCRA TSC), CPS Energy (CPS), and CenterPoint Energy Houston Electric, LLC (CenterPoint Energy).

Summary of Comments

The Joint Commenters, TCPA, LCRA, LCRA TSC, CPS and CenterPoint Energy, all supported the overall goal of updating and clarifying the existing oversight and enforcement process. LCRA, LCRA TSC and CPS supported the commission's purpose in revising the rule and noted that the rule should accurately reflect the responsibilities of the entities that perform oversight functions. The Joint Commenters provided the most detailed and comprehensive comments. TCPA, LCRA, LCRA TSC, CPS and CenterPoint Energy all generally supported the comments made by the Joint Commenters.

Comments on subsection (c)

LCRA, LCRA TSC and CPS recommended that the definition of "Reliability Monitor" be modified to recognize that market participants are only required to comply with binding ERCOT procedures and not standards that are merely advisory. Similarly, the Joint Commenters also recommended that the definition of "Reliability Monitor" be changed to state that the Reliability Monitor is only responsible for monitoring compliance with the ERCOT Protocols and Operating Guides rather than "ERCOT procedures including protocols, processes and any other operating standards" as originally proposed. Joint Commenters noted that the ERCOT Protocols and Operating Guides are the ERCOT requirements primarily related to reliability and that the reference

to other ERCOT procedures in the proposed rule is potentially overbroad and could be read to include documents not directly related to reliability.

Joint Commenters also suggested that the definitions in subsection (c) be reorganized in alphabetical order.

Finally, Joint Commenters also recommended that an outdated reference to "loads acting as resources" be stricken in favor of a reference to "generation and load" resources, which is consistent with current Nodal Protocols.

Commission Response

The commission declines to adopt the suggestion by LCRA, LCRA TSC CPS and Joint Commenters to limit the duties of the "Reliability Monitor" to monitoring compliance with the ERCOT Protocols and Operating Guides rather than "ERCOT procedures including protocols, processes and any other operating standards" as originally proposed because subsection (d) instructs the commission to monitor the activities of market entities to determine if such activities are consistent with ERCOT procedures. The commission finds that use of the term "ERCOT procedures" is appropriate because it mirrors the language in subsection (d) that describes the scope of activities that the commission is tasked with monitoring. The Reliability Monitor's duties include more than enforcement; they include oversight as well. Monitoring the activities of market participants may include examining market activities beyond the ERCOT Protocols and Operating Guides to allow the Reliability Monitor to evaluate the reliability of the market as a whole.

Furthermore, subsection (c) defines ERCOT Procedures as:

"Documents that contain the scheduling, operating, planning, reliability, and settlement procedures, standards, and criteria that are public and in effect in the ERCOT power region, including the ERCOT Protocols and ERCOT Operating Guides as amended from time to time but excluding ERCOT's internal administrative procedures. The Protocols generally govern when there are inconsistencies between the Protocols and the Operating Guides, except when ERCOT staff, consistent with subsection (i) of this section, determines that a provision contained in the Operating Guides is technically superior for the efficient and reliable operation of the electric network."

The commission concludes that this existing definition addresses the concerns raised by commenters and should alleviate any concerns about the rule's reference to "other ERCOT procedures" being overbroad.

The commission agrees with Joint Commenters' suggestion to reorganize the definitions in alphabetical order and has made this change. The commission also agrees with Joint Commenters' proposal to delete the reference to "loads acting as resources." The commission agrees that the language suggested by Joint Commenters is a more accurate description of this service and has also made this change in the rule as adopted.

Comments on subsection (j)

Joint Commenters suggested minor changes to the list of examples of potential material occurrences of non-compliance in subsection (j)(1). Joint Commenters also recommended that the term "Reliability Monitor" be capitalized throughout §25.503.

Commission Response

The commission adopts the changes to subsection (j) suggested by Joint Commenters. The commission agrees the new language eliminates references to obsolete terms and appropriately capitalizes Reliability Monitor as a defined term.

Comments on subsection (k)

Joint Commenters, TCPA, LCRA, LCRA TSC, CPS and CenterPoint Energy recommended that confidentiality language be added to subsection (k) to expressly require the Reliability Monitor to protect competitively sensitive information that they may obtain from market participants during the course of their monitoring and investigating activities. TCPA supported adding language in this rule that mirrors the confidentiality provisions applicable to the Independent Market Monitor (IMM) found in §25.365, relating to Independent Market Monitor.

Joint Commenters further suggested that the reference to laws, rules and ERCOT procedures in subsection (k)(1) should be changed to mirror Joint Commenters' suggested language in subsection (c)(6) to describe the responsibilities of the Reliability Monitor. Finally, Joint Commenters recommended that subsection (k)(1) be revised to reflect that the Reliability Monitor will monitor, investigate, audit, report to the commission only "material occurrences of non-compliance" consistent with Joint Commenters' suggested changes to the list of non-compliance indicators in subsection (j).

Commission Response

The commission agrees with those commenters suggesting the addition of confidentiality language to subsection (k) and has added the language suggested by Joint Commenters in the rule as adopted.

The commission declines to adopt Joint Commenters' suggested change to subsection (k)(1) regarding ERCOT procedures because ERCOT procedures is a defined term in §25.503(c).

The commission declines to adopt Joint Commenters' recommended change to subsection (k)(1) limiting the Reliability Monitor to monitoring, investigating, auditing, and reporting on only material occurrences of non-compliance. The ability of the Reliability Monitor to conduct overarching compliance monitoring and auditing is a necessary component of identifying material instances of non-compliance. The broad monitoring function is also necessary for the Reliability Monitor to carry out the requirement in §25.503(k)(2) to provide reliability-related subject matter advice, expertise, and assistance to the commission's oversight activities, such as monitoring the general effectiveness of compliance standards. Industry practice often informs the interpretation of the protocols and widespread non-compliance may indicate the need for a change in the rules.

Additionally, whether an occurrence of non-compliance rises to a level of materiality is a determination for the commission to make when considering the facts surrounding the violation and weighing each of the penalty factors set out in PURA and commission rules. For example, determination of materiality is not defined by the type of violation that occurred. Materiality may be influenced by situational elements, such as whether a violation occurred during an emergency event, or continued over an extended period of time, or had a system-wide impact versus a geographically isolated impact. Similarly, multiple instances of immaterial non-compliance could rise to the level of material non-compliance, especially where a market participant has been previously notified of the issue. If the Reliability Monitor only monitored, in-

vestigated, and audited material instances of non-compliance, these repeated instances of non-material non-compliance might go undetected. While the Reliability Monitor functions as a resource for staff in making a determination about materiality, the commission finds the ultimate determination of materiality lies with the commission.

Comments on subsection (l)

LCRA, LCRA TSC, and CPS urged the commission to adopt rigorous standards for the approval of the Reliability Monitor and proposed that the criteria listed in subsection (l) should not be merely suggested criteria to be considered, but should be mandatory requirements for the selection of the Reliability Monitor. LCRA, LCRA TSC and CPS further suggested changes to subsection (l) designed to insure the selection of a Reliability Monitor with demonstrated technical qualifications and infrastructure as well as specific knowledge and understanding of the ERCOT market, the types and configuration of facilities in ERCOT and the ERCOT stakeholder committees and processes. Joint Commenters suggested the term "Reliability Monitor" be capitalized in subsection (l).

Commission Response

The commission agrees with LCRA, LCRA TSC, and CPS that the criteria listed in (l) should be mandatory considerations for selection of the Reliability Monitor and adopts the suggested language. The commission also agrees with Joint Commenters' request to capitalize the term "Reliability Monitor" throughout the rule.

Comments on subsection (m)

Joint Commenters recommended that the term "Reliability Monitor" be capitalized in subsection (m).

Commission Response

As noted previously, the commission agrees with the Joint Commenters' recommendation and has made this change in the rule as adopted.

Comments on subsection (n)

Joint Commenters recommended several clarifying changes to make terminology used in the rule consistent with terminology in the current ERCOT Nodal Protocols.

Commission Response

The commission agrees with the revisions to subsection (n) suggested by Joint Commenters and has made these changes in the adopted rule.

Comments on subsection (o)

Joint Commenters suggested that two provisions of the existing rule recognize that formal enforcement is not always appropriate and that these two provisions be incorporated into subsection (o) as adopted and should be considered by commission staff in deciding whether to pursue formal enforcement against a market participant. One of these provisions is subsection (j)(4), which was deleted in the proposed rule, and which allows ERCOT to treat non-compliance issues as resolved if they are discontinued and not repeated more than once over a six-month period. Joint Commenters' suggest that this indicates that the robustness of a market participant's compliance program is relevant to pursuit of an enforcement action. The other subsection referenced by Joint Commenters is §25.503(d) which requires the commission

to consider whether a market participant's activity adversely affected specific aspects of the market.

Joint Commenters, TCPA and LCRA, LCRA TSC, and CPS argued that market participants will be incented to invest in internal systems and controls for monitoring and correcting problems if staff, ERCOT and the Reliability Monitor work with market participants to promptly remediate immaterial non-compliance issues rather than pursuing formal enforcement action and that the rule should expressly authorize staff to do this. The Joint Commenters also noted that perfection is not a realistic standard, regardless of how strong a company's internal compliance program may be.

The Joint Commenters asserted that the criteria in subsection (d) of the rule are consistent with PURA provisions to foster and protect competition, to ensure reliability and to protect customers from abusive practices. The Joint Commenters cited to PURA §§35.004(e), 39.001(a), 39.151 and 39.157 as examples of these responsibilities. Joint Commenters requested that subsection (o) be revised to clarify that the process described in this subsection applies when commission staff learns of potential material issues of non-compliance from ERCOT, the Reliability Monitor or the IMM. Joint Commenters argued that this process should be used by commission staff regardless of how staff learns about the potential violation and even if there has already been a preliminary determination made by ERCOT, the Reliability Monitor, or the IMM regarding an occurrence of material non-compliance. Joint Commenters suggest that a report from ERCOT, the Reliability Monitor, or IMM should not substitute for a separate fact finding investigation by staff to determine whether to pursue enforcement. Joint Commenters recommended that staff take into account the criteria in subsection (d) and the robustness of a market participant's compliance program in determining whether a formal enforcement action is necessary. LCRA, LCRA TSC and CPS stated that inclusion of the criteria of subsection (d) into subsection (o) will enhance administrative efficiency and will promote a compliance culture for ERCOT market participants. Additionally, LCRA, LCRA TSC, and CPS argued that inclusion of the criteria of subsection (d) in subsection (o) of the rule would increase transparency of both the enforcement process and market participants' compliance processes.

Commission Response

The commission adopts in part and declines to adopt in part the revisions to subsection (o) suggested by Joint Commenters, LCRA, LCRA TSC, CPS and which were generally supported by TCPA and CenterPoint Energy. The commission agrees with those commenters who asserted that a formal enforcement action is not always appropriate when violations occur and adopts suggested language to expressly authorize staff to work with a market participant for whom formal enforcement is not warranted. This reflects current practices in which commission staff routinely resolves instances of immaterial non-compliance without recommending administrative penalties or other formal enforcement actions.

The commission declines to adopt the recommendation to incorporate §25.503(d) and the robustness of a market participant's compliance program into the determination of whether to pursue formal enforcement. PURA §15.023(c) identifies the following factors for the commission to consider when imposing an administrative penalty:

(1) The seriousness of the violation;

(2) The economic harm to property or the environment causes by the violation;

(3) The history of previous violations;

(4) The amount necessary to deter future violations;

(5) Efforts to correct the violation; and

(6) Other matters that justice may require.

Additionally, the commission is required to consider the multiple guidelines set out in all of §25.503, including subsection (d), but also including subsection (f) which examines whether the market participant had a duty to comply with the ERCOT procedure and subsection (g) which governs whether the conduct of the market participant constituted a prohibited activity. Identifying substantive rule §25.503(d) as the singular consideration implies that these other relevant sections of PURA and commission rules are excluded from the evaluation of whether to bring a formal enforcement action. Therefore, the commission declines to incorporate a reference to subsection (d) into subsection (o).

Similarly, while the commission agrees with commenters that the robustness of a market participant's compliance program is a factor to consider in the enforcement process, the commission finds that the current enforcement framework established in PURA §15.023 and commission rules effectively provides for consideration of a market participant's compliance program as it relates to the violation at hand. Evaluating the robustness of a market participant's compliance program is inherent in considering an entity's history of previous violations, the amount of administrative penalties necessary to deter future violations, and an entity's efforts to correct its violations. Requiring consideration of a market participant's overall compliance program in the absence of its effect on the individual violation is unnecessary and inefficient. In a market as complex as the ERCOT wholesale market, nearly all market participants have robust, well-established compliance programs. However, the robustness of a market participant's overall compliance program may not be relevant to the compliance of a specific matter. Considering the robustness of a compliance program's relevance to a particular violation as one factor in the commission's overall determination, as required by PURA and current commission rules, is the more tailored and appropriate methodology for use in an enforcement context. For these reasons, the commission declines to adopt the recommended language.

The commission recognizes the concerns expressed by Joint Commenters regarding perfection as an unrealistic standard. The current rules and protocols provide existing avenues for a market participant should something beyond their control contribute to an instance of non-compliance. For example, §25.503(f)(2)(C) provides circumstances in which non-compliance is excused, such as when the violation is due to equipment failure beyond the reasonable control of the market participant, or if compliance would jeopardize public health and safety or the reliability of the electric grid. Additionally, subsection (h)(2) of the rule establishes affirmative defenses that may be asserted by a party that conducted an act or practice that is a prohibited activity. The commission finds that the existing statutory administrative penalty framework and commission rules, as well as the adopted language recognizing an alternative to formal enforcement adequately address the concerns of the Joint Commenters regarding perfection as a compliance standard.

The commission declines to adopt the Joint Commenters recommended language authorizing staff to initiate an investigation

following a report regarding material instances of non-compliance received from ERCOT, the Reliability Monitor, or the Independent Market Monitor. These circumstances are effectively included within the umbrella of staff opening an investigation upon its own initiative. For the previously discussed reasons, the commission finds that the determination of what constitutes material non-compliance is best made by the commission. The commission agrees that while staff may rely upon the facts and analysis disclosed in such reports to form an initial determination of whether a violation has occurred, a report from ERCOT, the Reliability Monitor, or the IMM does not preclude staff from conducting a further fact finding investigation, nor does it preclude a market participant from being afforded the opportunity to respond to allegations that have been made. The commission agrees with the Joint Commenters that the process outlined in subsection (o) should be followed regardless of the manner in which staff learns of a potential violation and finds that the existing rule language sufficiently encompasses this concept.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2014) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, PURA §39.151 which grants the commission authority to adopt and enforce rules concerning the reliability of the regional electrical network. Section 39.151 further provides that the commission may delegate to an independent organization responsibilities for establishing or enforcing such rules, which are subject to commission oversight and review.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, §39.151.

§25.503. *Oversight of Wholesale Market Participants.*

(a) Purpose. The purpose of this section is to establish the standards that the commission will apply in monitoring the activities of entities participating in the wholesale electricity markets, including markets administered by the Electric Reliability Council of Texas (ERCOT), and enforcing the Public Utility Regulatory Act (PURA) and ERCOT procedures relating to wholesale markets. The standards contained in this rule are necessary to:

- (1) protect customers from unfair, misleading, and deceptive practices in the wholesale markets, including ERCOT-administered markets;
- (2) ensure that ancillary services necessary to facilitate the reliable transmission of electric energy are available at reasonable prices;
- (3) afford customers safe, reliable, and reasonably priced electricity;
- (4) ensure that all wholesale market participants observe all scheduling, operating, reliability, and settlement policies, rules, guidelines, and procedures established in the ERCOT procedures;
- (5) clarify prohibited activities in the wholesale markets, including ERCOT-administered markets;
- (6) monitor and mitigate market power as authorized by the Public Utility Regulatory Act (PURA) §39.157(a) and prevent market power abuses;
- (7) clarify the standards and criteria the commission will use when reviewing wholesale market activities;
- (8) clarify the remedies for non-compliance with the Protocols relating to wholesale markets; and

(9) prescribe ERCOT's role in enforcing ERCOT procedures relating to the reliability of the regional electric network and accounting for the production and delivery among generators and all other market participants, and monitoring and obtaining compliance with operating standards within the ERCOT regional network.

(b) Application. This section applies to all market entities, as defined in subsection (c) of this section.

(c) Definitions. The following words and terms when used in this section shall have the following meaning, unless the context indicates otherwise:

(1) Artificial congestion--Congestion created when multiple foreseeable options exist for scheduling, dispatching, or operating a resource, and a market participant chooses an option that is not the most economical, that foreseeably creates or exacerbates transmission congestion, and that results in the market participant being paid to relieve the congestion it caused.

(2) Efficient operation of the market--Operation of the markets administered by ERCOT, consistent with reliability standards, that is characterized by the fullest use of competitive auctions to procure ancillary services, minimal cost socialization, and the most economical utilization of resources, subject to necessary operational and other constraints.

(3) ERCOT procedures--Documents that contain the scheduling, operating, planning, reliability, and settlement procedures, standards, and criteria that are public and in effect in the ERCOT power region, including the ERCOT Protocols and ERCOT Operating Guides as amended from time to time but excluding ERCOT's internal administrative procedures. The Protocols generally govern when there are inconsistencies between the Protocols and the Operating Guides, except when ERCOT staff, consistent with subsection (i) of this section, determines that a provision contained in the Operating Guides is technically superior for the efficient and reliable operation of the electric network.

(4) Excess Revenue--Revenue in excess of the revenue that would have occurred absent a violation of PURA §39.157 or this section.

(5) Market entity--Any person or entity participating in the ERCOT-administered wholesale market, including, but not limited to, a load serving entity (including a municipally owned utility and an electric cooperative,) a power marketer, a transmission and distribution utility, a power generation company, a qualifying facility, an exempt wholesale generator, ERCOT, and any entity conducting planning, scheduling, or operating activities on behalf of, or controlling the activities of, such market entities.

(6) Market participant--A market entity other than ERCOT.

(7) Reliability Monitor--A person or entity selected by the commission to monitor compliance with all state reliability-related laws, rules, and ERCOT procedures including protocols, processes and any other operating standards applicable to the ERCOT Region.

(8) Resource--Facilities capable of providing electrical energy or load capable of reducing or increasing the need for electrical energy or providing short-term reserves into the ERCOT system. This includes generation and load resources.

(d) Standards and criteria for enforcement of ERCOT procedures and PURA. The commission will monitor the activities of market entities to determine if such activities are consistent with ERCOT procedures; whether they constitute market power abuses or are unfair, misleading, or deceptive practices affecting customers; and whether they are consistent with the proper accounting for the production and

delivery of electricity among generators and other market participants. When reviewing the activities of a market entity, the commission will consider whether the activity was conducted in a manner that:

(1) adversely affected customers in a material way through the use of unfair, misleading, or deceptive practices;

(2) materially reduced the competitiveness of the market, including whether the activity unfairly impacted other market participants in a way that restricts competition;

(3) disregarded its effect on the reliability of the ERCOT electric system; or

(4) interfered with the efficient operation of the market.

(e) Guiding ethical standards. Each market participant is expected to:

(1) observe all applicable laws and rules;

(2) schedule, bid, and operate its resources in a manner consistent with ERCOT procedures to support the efficient and reliable operation of the ERCOT electric system; and

(3) not engage in activities and transactions that create artificial congestion or artificial supply shortages, artificially inflate revenues or volumes, or manipulate the market or market prices in any way.

(f) Duties of market entities.

(1) Each market participant shall be knowledgeable about ERCOT procedures.

(2) A market participant shall comply with ERCOT procedures and any official interpretation of the Protocols issued by ERCOT or the commission.

(A) If a market participant disagrees with any provision of the Protocols or any official interpretation of the Protocols, it may seek an amendment of the Protocols as provided for in the Protocols, appeal an ERCOT official interpretation to the commission, or both.

(B) A market participant appealing an official interpretation of the Protocols or seeking an amendment to the Protocols shall comply with the Protocols unless and until the interpretation is officially changed or the amendment is officially adopted.

(C) A market participant may be excused from compliance with ERCOT instructions or Protocol requirements only if such non-compliance is due to communication or equipment failure beyond the reasonable control of the market participant; if compliance would jeopardize public health and safety or the reliability of the ERCOT transmission grid, or create risk of bodily harm or damage to the equipment; if compliance would be inconsistent with facility licensing, environmental, or legal requirements; if required by applicable law; or for other good cause. A market participant is excused under this subparagraph only for so long as the condition continues.

(3) Whenever the Protocols require that a market participant make its "best effort" or a "good faith effort" to meet a requirement, or similar language, the market participant shall act in accordance with the requirement unless:

(A) it is not technically possible to do so;

(B) doing so would jeopardize public health and safety or the reliability of the ERCOT transmission grid, or would create a risk of bodily harm or damage to the equipment;

(C) doing so would be inconsistent with facility licensing, environmental, or legal requirements; or

(D) other good cause exists for excusing the requirement.

(4) When a market participant is not able to comply with a Protocol requirement or official interpretation of a requirement, or honor a formal commitment to ERCOT, the market participant has an obligation to notify ERCOT immediately upon learning of such constraints and to notify ERCOT when the problem ceases. A market participant who does not comply with a Protocol requirement or official interpretation of a requirement, or honor a formal commitment to ERCOT, has the burden to demonstrate, in any commission proceeding in which the failure to comply is raised, why it cannot comply with the Protocol requirement or official interpretation of the requirement, or honor the commitment.

(5) The commission staff may request information from a market participant concerning a notification of failure to comply with a Protocol requirement or official interpretation of a requirement, or honor a formal commitment to ERCOT. The market participant shall provide a response that is detailed and reasonably complete, explaining the circumstances surrounding the alleged failure, and shall provide documents and other materials relating to such alleged failure to comply. The response shall be submitted to the commission staff within five business days of a written request for information, unless commission staff agrees to an extension.

(6) A market participant's bids of energy and ancillary services shall be from resources that are available and capable of performing, and shall be feasible within the limits of the operating characteristics indicated in the resource plan, as defined in the Protocols, and consistent with the applicable ramp rate, as specified in the Protocols.

(7) All statements, data and information provided by a market participant to market publications and publishers of surveys and market indices for the computation of an industry price index shall be true, accurate, reasonably complete, and shall be consistent with the market participant's activities, subject to generally accepted standards of confidentiality and industry standards. Market participants shall exercise due diligence to prevent the release of materially inaccurate or misleading information.

(8) A market entity has an obligation to provide accurate and factual information and shall not submit false or misleading information, or omit material information, in any communication with ERCOT or with the commission. Market entities shall exercise due diligence to ensure adherence to this provision throughout the entity.

(9) A market participant shall comply with all reporting requirements governing the availability and maintenance of a generating unit or transmission facility, including outage scheduling reporting requirements. A market participant shall immediately notify ERCOT when capacity changes or resource limitations occur that materially affect the availability of a unit or facility, the anticipated operation of its resources, or the ability to comply with ERCOT dispatch instructions.

(10) A market participant shall comply with requests for information or data by ERCOT as specified by the Protocols or ERCOT instructions within the time specified by ERCOT instructions, or such other time agreed to by ERCOT and the market participant.

(11) When a Protocol provision or its applicability is unclear, or when a situation arises that is not contemplated under the Protocols, a market entity seeking clarification of the Protocols shall use the Protocol Revision Request (PRR) process provided in the Protocols. If the PRR process is impractical or inappropriate under the circumstances, the market entity may use the process for requesting formal Protocol clarifications or interpretations described in subsection (i) of this section. This provision is not intended to discourage day to

day informal communication between market participants and ERCOT staff.

(12) A market participant operating in the ERCOT markets or a member of the ERCOT staff who identifies a provision in the ERCOT procedures that produces an outcome inconsistent with the efficient and reliable operation of the ERCOT-administered markets shall call the provision to the attention of ERCOT staff and the appropriate ERCOT subcommittee. All market participants shall cooperate with the ERCOT subcommittees, ERCOT staff, and the commission staff to develop Protocols that are clear and consistent.

(13) A market participant shall establish and document internal procedures that instruct its affected personnel on how to implement ERCOT procedures according to the standards delineated in this section. Each market participant shall establish clear lines of accountability for its market practices.

(g) Prohibited activities. Any act or practice of a market participant that materially and adversely affects the reliability of the regional electric network or the proper accounting for the production and delivery of electricity among market participants is considered a "prohibited activity." The term "prohibited activity" in this subsection excludes acts or practices expressly allowed by the Protocols or by official interpretations of the Protocols and acts or practices conducted in compliance with express directions from ERCOT or commission rule or order or other legal authority. The term "prohibited activity" includes, but is not limited to, the following acts and practices that have been found to cause prices that are not reflective of competitive market forces or to adversely affect the reliability of the electric network:

(1) A market participant shall not schedule, operate, or dispatch its generating units in a way that creates artificial congestion.

(2) A market participant shall not execute pre-arranged off-setting trades of the same product among the same parties, or through third party arrangements, which involve no economic risk and no material net change in beneficial ownership.

(3) A market participant shall not offer reliability products to the market that cannot or will not be provided if selected.

(4) A market participant shall not conduct trades that result in a misrepresentation of the financial condition of the organization.

(5) A market participant shall not engage in fraudulent behavior related to its participation in the wholesale market.

(6) A market participant shall not collude with other market participants to manipulate the price or supply of power, allocate territories, customers or products, or otherwise unlawfully restrain competition. This provision should be interpreted in accordance with federal and state antitrust statutes and judicially-developed standards under such statutes regarding collusion.

(7) A market participant shall not engage in market power abuse. Withholding of production, whether economic withholding or physical withholding, by a market participant who has market power, constitutes an abuse of market power.

(h) Defenses. The term "prohibited activity" in subsection (g) of this section excludes acts or practices that would otherwise be included, if the market entity establishes that its conduct served a legitimate business purpose consistent with prices set by competitive market forces; and that it did not know, and could not reasonably anticipate, that its actions would inflate prices, adversely affect the reliability of the regional electric network, or adversely affect the proper accounting for the production and delivery of electricity; or, if applicable, that it exercised due diligence to prevent the excluded act or practice. The defenses established in this subsection may also be asserted in instances

in which a market participant is alleged to have violated subsection (f) of this section. A market entity claiming an exclusion or defense under this subsection, or any other type of affirmative defense, has the burden of proof to establish all of the elements of such exclusion or defense.

(i) Official interpretations and clarifications regarding the Protocols. A market entity seeking an interpretation or clarification of the Protocols shall use the PRR process contained in the Protocols whenever possible. If an interpretation or clarification is needed to address an unforeseen situation and there is not sufficient time to submit the issue to the PRR process, a market entity may seek an official Protocol interpretation or clarification from ERCOT in accordance with this subsection.

(1) ERCOT shall develop a process for formally addressing requests for clarification of the Protocols submitted by market participants or issuing official interpretations regarding the application of Protocol provisions and requirements. ERCOT shall respond to the requestor within ten business days of ERCOT's receipt of the request for interpretation or clarification with either an official Protocol interpretation or a recommendation that the requestor take the request through the PRR process.

(2) ERCOT shall designate one or more ERCOT officials who will be authorized to receive requests for clarification from, and issue responses to market participants, and to issue official interpretations on behalf of ERCOT regarding the application of Protocol provisions and requirements.

(3) The designated ERCOT official shall provide a copy of the clarification request to commission staff upon receipt. The ERCOT official shall consult with ERCOT operational or legal staff as appropriate and with commission staff before issuing an official Protocol clarification or interpretation.

(4) The designated ERCOT official may decide, in consultation with the commission staff, that the language for which a clarification is requested is ambiguous or for other reason beyond ERCOT's ability to clarify, in which case the ERCOT official shall inform the requestor, who may take the request through the PRR process provided for in the Protocols.

(5) All official Protocol clarifications or interpretations that ERCOT issues in response to a market participant's formal request or upon ERCOT's own initiative shall be sent out in a market bulletin with the appropriate effective date specified to inform all market participants, and a copy of the clarification or interpretation shall be maintained in a manner that is accessible to market participants. Such response shall not contain information that would identify the requesting market participant.

(6) A market participant may freely communicate informally with ERCOT employees, however, the opinion of an individual ERCOT staff member not issued as an official interpretation of ERCOT pursuant to this subsection may not be relied upon as an affirmative defense by a market participant.

(j) Role of ERCOT in enforcing operating standards. ERCOT shall monitor material occurrences of non-compliance with ERCOT procedures, which shall mean occurrences that have the potential to impede ERCOT operations, or represent a risk to system reliability. Non-compliance indicators monitored by ERCOT shall include, but shall not be limited to, material occurrences of failing resource performance measures as established by ERCOT, failure to follow dispatch instructions within the required time, failure to meet ancillary services obligations, failure to submit mandatory bids or offers, and other instances of non-compliance of a similar magnitude.

(1) ERCOT shall keep a record of all such material occurrences of non-compliance with ERCOT procedures and shall develop a system for tracking recurrence of such material occurrences of non-compliance.

(2) ERCOT shall promptly provide information to and respond to questions from market participants to allow the market participant to understand and respond to alleged material occurrences of non-compliance with ERCOT procedures. However, this requirement does not relieve the market participant's operator from responding to the ERCOT operator's instruction in a timely manner and shall not be interpreted as allowing the market participant's operator to argue with the ERCOT operator as to the need for compliance.

(3) ERCOT shall keep a record of the resolution of such material occurrences of non-compliance and of remedial actions taken by the market participant in each instance.

(4) ERCOT shall promptly provide information to and respond to questions posed by the Reliability Monitor and the commission;

(5) ERCOT shall provide to the Reliability Monitor and the commission the support and cooperation the commission determines is necessary for the Reliability Monitor and the commission to perform their functions.

(k) Responsibilities of the Reliability Monitor. The Reliability Monitor shall gather and analyze information and data as needed for its reliability monitoring activities. The Reliability Monitor works under the direction and supervision of the commission. The Reliability Monitor shall protect confidential information and data in accordance with the confidentiality standards established in PURA, the ERCOT protocols, commission rules, and other applicable laws. The requirements related to the level of protection to be afforded information protected by these laws and rules are incorporated into this section. The duties and responsibilities of the Reliability Monitor may include, but are not limited to:

(1) Monitoring, investigating, auditing, and reporting to the commission regarding compliance with reliability-related ERCOT procedures, including Protocols and Operating Guides, the reliability-related provisions of the commission's rules, and reliability-related provisions of PURA by Market Entities;

(2) Providing reliability-related subject-matter advice, expertise, and assistance to the commission in the conduct of the commission's oversight and enforcement activities; and

(3) Providing expert advice, analysis, reports, and testimony services relating to the Reliability Monitor's analysis and findings as part of the commission staff's case in enforcement proceedings.

(l) Selection of the Reliability Monitor. The commission and ERCOT shall contract with an entity selected by the commission to act as the commission's Reliability Monitor. The Reliability Monitor shall be independent from ERCOT and is not subject to the supervision of ERCOT with respect to its monitoring and investigative activities. In selecting the Reliability Monitor, the commission must consider whether the Reliability Monitor satisfies the following criteria:

(1) Independent, objective, and without conflicts of interest;

(2) Experience performing compliance monitoring of reliability-related laws;

(3) Familiarity with the ERCOT Region and demonstrated understanding in reliability-related ERCOT protocols, procedures, and other operating standards;

(4) Demonstrated ability to manage confidential information appropriately; and

(5) Cost effectiveness.

(m) Funding of the Reliability Monitor. ERCOT shall fund the operations of Reliability Monitor from the fee authorized by PURA §39.151.

(n) Standards for record keeping.

(1) A market participant who schedules through a qualified scheduling entity (QSE) that submits schedules to ERCOT on behalf of more than one market participants shall maintain records to show scheduling, offer, and bidding information for all schedules, offers, and bids that its QSE has submitted to ERCOT on its behalf, by interval.

(2) All market participants and ERCOT shall maintain records relative to market participants' activities in the ERCOT-administered markets to show:

(A) information on transactions, as defined in §25.93(c)(3) of this title (relating to Quarterly Wholesale Electricity Transaction Reports), including the date, type of transaction, amount of transaction, and entities involved;

(B) information and documentation of all planned, maintenance, and forced generation and transmission outages including all documentation necessary to document the reason for the outage;

(C) information described under this subsection including transaction information, information on pricing, settlement information, and other information that would be relevant to an investigation under this section, and that has been disclosed to market publications and publishers of surveys and price indices, including the date, information disclosed, and the name of the employees involved in providing the information as well as the publisher to whom it was provided; and

(D) reports of the market participant's financial information given to external parties, including the date, financial results reported, and the party to whom financial information was reported, if applicable.

(3) After the effective date of this section, all records referred to in this subsection except verbally dispatch instructions (VDIs) shall be kept for a minimum of three years from the date of the event. ERCOT shall keep VDI records for a minimum of two years. All records shall be made available to the commission for inspection upon request.

(4) A market participant shall, upon request from the commission, provide the information referred to in this subsection to the commission, and may, if applicable, provide it under a confidentiality agreement or protective order pursuant to §22.71(d) of this title (relating to Filing of Pleadings, Documents, and Other Material).

(o) Investigation. The commission staff may initiate an informal fact-finding review based on a complaint or upon its own initiative to obtain information regarding facts, conditions, practices, or matters that it may find necessary or proper to ascertain in order to evaluate whether any market entity has violated any provision of this section.

(1) The commission staff will contact the market entity whose activities are in question to provide the market entity an opportunity to explain its activities. The commission staff may require the market entity to provide information reasonably necessary for the purposes described in this subsection.

(2) If the market entity asserts that the information requested by commission staff is confidential, the information shall be provided to commission staff as confidential information related

to settlement negotiations or other asserted bases for confidentiality pursuant to §22.71(d)(4) of this title.

(3) If after conducting its fact-finding review, the commission staff determines that a market entity may have violated this section, the commission staff may request that the commission initiate a formal investigation against the market entity pursuant to §22.241 of this title (relating to Investigations).

(4) If, as a result of its investigation, commission staff determines that there is evidence of a violation of this section by a market entity, the commission staff may request that the commission initiate appropriate enforcement action against the market entity. A notice of violation requesting administrative penalties or disgorgement of excess revenues shall comply with the requirements of §22.246 of this title (relating to Administrative Penalties). Adjudication of a notice of violation requesting both an administrative penalty and disgorgement of excess revenues may be conducted within a single contested case proceeding. Additionally, for alleged violations that have been reviewed in the informal procedure established by this subsection, the commission staff shall include as part of its prima facie case:

(A) a statement either that--

(i) the commission staff has conducted the investigation allowed by this section; or

(ii) the market entity has failed to comply with the requirements of paragraph (5) of this subsection;

(B) a summary of the evidence indicating to the commission staff that the market entity has violated one of the provisions of this section;

(C) a summary of any evidence indicating to the commission staff that the market entity benefited from the alleged violation or materially harmed the market; and

(D) a statement that the staff has concluded that the market entity failed to demonstrate, in the course of the investigation, the applicability of an exclusion or affirmative defense under subsection (h) of this section.

(5) A market entity subject to an informal fact-finding review or a formal investigation by the commission staff has an obligation to fully cooperate with the investigation, to make its company representatives available within a reasonable period of time to discuss the subject of the investigation with the commission staff, and to respond to the commission staff's requests for information within a reasonable time frame as requested by the commission staff.

(6) The procedure for informal fact-finding review established in this subsection does not prevent any person or commission staff from filing a formal complaint with the commission pursuant to §22.242 of this title (relating to Complaints) or pursuing other relief available by law.

(7) If, in the course of its investigation under this subsection, commission staff determines that formal enforcement action is not warranted, the commission staff may work with the market entity to ensure any issues of concern are addressed and appropriate remedial actions have been taken.

(p) Remedies. If the commission finds that a market entity is in violation of this section, the commission may seek or impose any legal remedy it determines appropriate for the violation involved, provided that the remedy of disgorgement of excess revenues shall be imposed for violations and continuing violations of PURA §39.157 and may be imposed for other violations of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2015.

TRD-201503367

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

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Proposal publication date: June 5, 2015

For further information, please call: (512) 936-7293

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 71. RULEMAKING

22 TAC §71.2

The Texas Board of Chiropractic Examiners (Board) adopts amended Chapter 71, §71.2, concerning Petition for Adoption of Rules, without changes to the proposed text as published in the July 17, 2015, issue of the *Texas Register* (40 TexReg 4517) and will not be republished.

The section established requirements and procedures for a petition for adoption of rules.

The rules provide a benefit to the public by creating additional flexibility in the approval of the waiver process concerning a petition for adoption of rules.

No comments were received regarding the adoption of the amendment.

This amended rule is adopted under Texas Occupations Code §201.152 and Texas Government Code §2001.021, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. Section 2001.021 requires state agencies to adopt a rule prescribing the form for a rule petition and the procedure for its submission, consideration and disposition.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201503366

Bryan Snoddy

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Texas Board of Chiropractic Examiners

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Proposal publication date: July 17, 2015

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CHAPTER 77. PROFESSIONAL CONDUCT

22 TAC §77.5

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of Chapter 77, §77.5, concerning Delegation of Authority. This repeal is adopted without changes to the proposal as published in the April 17, 2015, issue of the *Texas Register* (40 TexReg 2163) and will not be republished.

This repeal was adopted upon a recommendation by the Rules Committee to the Board to adopt a new rule §77.5 that was approved for adoption by the Board for publication. Comments were received that noted the delegation rule was not clear in providing guidance to the licensee on who and under what circumstances authority could be delegated.

This repeal is adopted under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201503276

Bryan Snoddy

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Proposal publication date: April 17, 2015

For further information, please call: (512) 305-6715



22 TAC §77.5

The Texas Board of Chiropractic Examiners (Board) adopts new Chapter 77, §77.5, concerning Delegation of Authority, with changes to the proposed text as published in the April 17, 2015, issue of the *Texas Register* (40 TexReg 2163). The rule will be republished with modifications.

This section establishes requirements and procedures related to professional conduct.

The new rule provides benefits to the public by clarifying multiple subsections of the rule on delegation of authority to ensure the practice and delivery of chiropractic services that consistently protects the safety and welfare of the public.

Comment was received from Texas Medical Association (TMA). In regard to subsection (a), the language in the rule regarding health care was modified to chiropractic care. Further modest changes have been made to the rule as originally proposed to assist in clarifying the rule.

TMA asserts that use of diagnosis does not adequately track the statutory language of "analyze, examine or evaluate." The Board relies upon the prior ruling from the Third Court of Appeals that established that diagnosis was a synonym for the "analyze, examine or evaluate" language of the statute. Thus, the rule does not enlarge the statutory provision. The Board does note that the matter has been brought before a court for review once again, but presently, it is the established law and the Board shall abide by it accordingly.

Similarly, in subsection (b)(1), the Board relies upon the same ruling of the Third Court of Appeals. With regard to notion that the rule permits the delegation of a treatment plan, it is a misreading of the text. The language in subsection (b) clearly indicates that a licensee "shall not allow" that to occur.

With regard to subsection (c)(1), the AHA/AMA's scientific statement is noted, but as the TMA itself notes, the "scientific statement" lacks the certainty associated with the scientific statement. Certainly, the Board is always concerned with the safe practice of chiropractic to ensure the health and welfare of the public, but TMA's reliance upon a cautionary statement unsupported by scientific proof is misplaced. There is no reason to believe that the properly trained student engaged in an outpatient program will cause an imminent harm to the public's health and safety while a chiropractor is present onsite and prepared to handle any emergency that may arise promptly. The concerns with subsection (d) are subsumed in the Board's comments above.

Concerning subsection (e), it is axiomatic that delegation must necessarily involve the ability to delegate that which one possesses authority to do. Thus, TMA's concerns that this provision expands scope are unsupported. Further, any single portion of a rule should not be read in isolation. Nothing within this rule precludes the requirements of chiropractors to ensure compliance with Chapter 78 which governs the rules of practice.

Likewise, TMA's comment on subsection (f) regarding diagnosis is subsumed in the Board's comments above wherein the Board relies upon the decision of the Third Court of Appeals. The comment relating to clarifying that the chiropractor is permitting action by delegation is well received, and the language was modified accordingly. It should additionally be noted that the changes to subsection (a) respond to TMA's concerns on scope. Moreover, no rule should be read in isolation. Nothing within this rule absolves a person of compliance with Rule 74.2 concerning chiropractic radiologic technologists and the general prohibitions contained therein. Additionally, TMA suggests without compelling rationale that chiropractors may not employ "prescribed physical therapy modalities, therapeutic procedures, physical medicine and rehabilitation" because such procedures are beyond the scope of chiropractic. However, this appears contradictory to the plan language of the Chiropractic Act which expressly authorizes chiropractors to "perform[] nonsurgical, nonincisive procedures, including adjustment and manipulation to improve the subluxation complex or the biomechanics of the musculoskeletal system." See TEX. OCC. CODE §201.002(b)(2). Finally, the Board notes that concern regarding delegation in excess of other provisions of law is well received. New subsection (l) provides that a chiropractor may not delegate to a subordinate beyond any provision of existing law, code or provision that would prohibit such action.

With regard to subsection (g), TMA's concerns regarding scope are adequately addressed by Chapter 78 concerning Rules of Practice. Again, a rule should not be read in isolation. Doing so would lead to the absurd result of rules restating that which has already been stated and would create the untenable situation of unnecessary repetition.

Under subsection (h), TMA notes that a provision of the Chiropractic Act is not restated in full. As expressed above, unnecessary repetition is undesirable and ineffectual. Further, a mere recitation of the language of the statute is not the proper employment of a rule. Under Government Code §2001.003, a rule is a "state agency statement of general applicability that (i) implements, interprets, or prescribes law or policy; or (ii) describes

the procedure or practice requirements of a state agency...." A restatement of the statute is not found within the definition of a rule. As such, the Board does not believe this suggestion to be well founded.

Concerning TMA's comment on subsection (i) suggesting the addition of a statement that a licensee "retains full responsibility." The Board finds this to be a distinction without a difference. Further, the addition of the superfluous often has the effect of weakening the plainly stated. In this instance, the phrase "responsible for" would be weakened because adding the phraseology "retains full responsibility" necessarily implies that the former does not require full and complete responsibility. Therefore, this addition is not well founded. No modifications have been made accordingly.

In relation to subsection (j), TMA points out that radiological procedures and the supervision of students that have not completed an outpatient clinic should require the physical presence of the chiropractor. Additionally, they urge deletion of the 15 minute on-call availability requirement. This is nonsensical. First, there are a myriad of situations where a chiropractor may delegate the authority to a subordinate. The application of heat packs or a cold compress or positioning a patient upon a table are some of the many mundane and routine tasks and procedures that occur daily. The requirement to be present during each would severely limit a chiropractor from seeing a reasonable volume of patients and/or providing the quality of patient interaction consistent with the safety and welfare of the public. Next, the rule contemplates that a chiropractor must ensure that a person possesses the proper qualifications and training prior to delegation. Nothing within this rule removes that requirement. It merely permits the chiropractor to exercise discretion in that delegation. An abuse of that discretion has in the past and could in the future subject a chiropractor to administrative sanctions. Thus, the rule is consistent with maintaining the safety and welfare of the public.

Finally, on subsection (k), TMA seeks to have the rule modified to encompass situations where a licensee delegates under the act to be included in the patient's records. The Board would note that supervision is a broader concept than that of delegation. The inclusion of delegation does not appear to accomplish anything substantive that has not already been provided in Rule 77.8. In an effort to avoid redundancy, the language is left unmolested.

The Texas Chiropractic Association also noted a need to revise and clarify subsection (a) of the rule. The suggestion was well-received and the modification is reflected in the adopted language.

This new rule is adopted under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

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

§77.5. Delegation of Authority.

(a) The purpose of this section is to encourage the more effective use of the skills of licensees by establishing guidelines for the delegation of chiropractic care tasks to a qualified and properly trained person acting under a licensee's supervision to ensure proper diligence and efficient practice of chiropractic. This section provides the standards for credentialing a chiropractic assistant in Texas.

(b) Except as provided in this section, a licensee shall not allow or direct a person who is not licensed by the board to perform procedures or tasks that are within the scope of chiropractic, including:

- (1) rendering a diagnosis and prescribing a treatment plan;
- or
- (2) performing a chiropractic adjustment or manipulation.

(c) A licensee may allow or direct a student enrolled in an accredited chiropractic college to perform chiropractic adjustments or manipulations if that student has qualified for admission to the outpatient clinic at the aforementioned college. The chiropractic adjustment or manipulation must be performed under the supervision of a licensee who need not be physically present in the treating room at the time of the adjustment or manipulation, but must be on-site at the time of the adjustment or manipulation.

(d) A licensee may allow or direct certain recent graduates of an accredited chiropractic college to perform chiropractic adjustments or manipulations. A "recent graduate" is one who graduated from a chiropractic college accredited by the Council on Chiropractic Education (CCE) within the previous twelve (12) months.

(1) The licensee shall notify the Board in writing within ten (10) days of the graduate's hire/employment date and provide the name of each recent graduate, the name of the chiropractic college and date of graduation, a copy of the graduate's diploma, and the name and license number of the licensee supervising the graduate.

(2) The supervising chiropractor shall notify the Board within ten (10) days of the graduate's status as contained within this section.

(e) In delegating the performance of a specific task or procedure, a licensee shall verify that a person is qualified and properly trained. "Qualified and properly trained" as used in this section means that the person has the requisite education, training, and skill to perform a specific task or procedure.

(1) Requisite education may be determined by a license, degree, coursework, on-the-job training, or relevant general knowledge.

(2) Requisite training may be determined by instruction in a specific task or procedure, relevant experience, or on-the-job training.

(3) Requisite skill may be determined by a person's talent, ability, and fitness to perform a specific task or procedure.

(4) A licensee may delegate a specific task or procedure to an unlicensed person if the specific task or procedure is within the scope of chiropractic and if the delegation complies with the other requirements of this section, the Chiropractic Act, and the board's rules.

(f) A licensee may allow or direct a qualified and properly trained person, who is acting under the licensee's delegation, to perform a task or procedure that assists the doctor of chiropractic in making a diagnosis, prescribing a treatment plan or treating a patient if the performance of the task or procedure does not require the training of a doctor of chiropractic in order to protect the health or safety of a patient, such as:

- (1) taking the patient's medical history;
- (2) taking or recording vital signs;
- (3) performing radiologic procedures;
- (4) taking or recording range of motion measurements;
- (5) performing other prescribed clinical tests and measurements;

(6) performing prescribed physical therapy modalities, therapeutic procedures, physical medicine and rehabilitation, or other treatments as described in the American Medical Association's Current Procedural Terminology Codebook, the Centers for Medicare and Medicaid Services' Health Care Common Procedure Coding System, or other national coding system;

(7) demonstrating prescribed exercises or stretches for a patient; or

(8) demonstrating proper uses of dispensed supports and devices.

(g) A licensee may not allow or direct a person:

(1) to perform activities that are outside the licensee's scope of practice;

(2) to perform activities that exceed the education, training, and skill of the person or for which a person is not otherwise qualified and properly trained; or

(3) to exercise independent clinical judgment unless the person holds a valid Texas license or certification that would allow or authorize the person to exercise independent clinical judgment.

(h) A licensee shall not allow or direct a person whose chiropractic license has been suspended or revoked, in Texas or any other jurisdiction, to practice chiropractic in connection with the treatment of a patient of the licensee during the effective period of the suspension or upon revocation.

(i) A licensee is responsible for and will participate in each patient's care. A licensee shall conform to the minimal acceptable standards of practice of chiropractic in assessing and evaluating each patient's status.

(j) It is the responsibility of each licensee to determine the number of qualified and properly trained persons that the licensee can safely supervise. A licensee must be on-call when any or all treatment is provided under the licensee's direction unless there is another licensee present on-site or designated as being on-call. On-call means that the licensee must be available for consultation within 15 minutes either in person or by other means of telecommunication.

(k) A licensee's patient records shall differentiate between services performed by a doctor of chiropractic and the services performed by a person under the licensee's supervision.

(l) No provision contained within this section authorizes a chiropractor to delegate tasks or care to a subordinate in abrogation of any established law, code or provision to the contrary.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bryan Snoddy

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Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6715



CHAPTER 78. RULES OF PRACTICE

22 TAC §78.13

The Texas Board of Chiropractic Examiners (Board) adopts amendment to Chapter 78, §78.13, concerning Scope of Practice, without changes to the proposed text as published in the July 17, 2015, issue of the *Texas Register* (40 TexReg 4521) and will not be republished.

The section establishes requirements and procedures related to rules of practice.

The rules provide benefits to the public by making the definitions applicable to the entire chapter and aiding in clarity.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bryan Snoddy

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For further information, please call: (512) 305-6715



22 TAC §78.17

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of Chapter 78, §78.17, concerning Spinal Screenings. This rule is repealed without changes to the proposal as published in the April 17, 2015, issue of the *Texas Register* (40 TexReg 2167) and will not be republished.

This repeal was adopted upon a recommendation by the Rules Committee to the Board to adopt a new rule §78.17 that was approved for adoption by the Board for publication. No comments were received regarding the repeal.

This repeal is adopted under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-6715



22 TAC §78.17

The Texas Board of Chiropractic Examiners (Board) adopts new Chapter 78, §78.17, concerning Spinal Screenings, with changes to the proposed text as published in the April 17, 2015, issue of the *Texas Register* (40 TexReg 2167). The new rule will be republished with modifications.

This section establishes requirements and procedures related to rules of practice.

The rule provides benefits to the public by clarifying requirements to conduct a spinal screening and reducing the burden of compliance upon licensees while subsequently ensuring high-quality practice and delivery of chiropractic services that consistently protect the safety and welfare of the public.

The Texas Medical Association (TMA) provided comments. TMA believed it was in the best interest of the public to require signage informing the public about where to file a complaint and require each person performing chiropractic services under the Chiropractic Act to wear a name tag identifying the person's name and licensure status. However, the Board maintains that adding flexibility to the rule in the nature of signage does not compromise the Board's role of protecting the public's safety and well-being. In addition, the rule requires that members of the public be provided with ready access to business cards from the sponsoring clinic. Virtually any member of the public should be able to contact the Board and initiate a complaint if a situation warranted such action. But the additional requirement that persons conducting screenings be readily identifiable is well received and the rule has been modified accordingly.

This new rule is adopted under Texas Occupations Code §201.152, relating to rules. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety.

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

§78.17. *Spinal Screenings.*

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

(b) At all out-of-facility spinal screenings:

(1) the booth, site or location must prominently display the name of the sponsoring facility;

(2) the sponsoring facility must have business cards with contact information readily available to the public;

(3) the licensee must possess on their person the wallet size proof of licensure;

(4) a licensee and/or clinic sponsoring a spinal screening is responsible for ensuring compliance with §77.2 of this title (relating to Publicity); and

(5) a licensee may allow or direct any staff or employee to conduct a spinal screening upon ensuring compliance with §77.5 of this title (relating to Delegation of Authority), and maintaining proof of adequate training.

(c) Any person providing chiropractic services under this section shall wear on their person a readily visible identification tag that provides the name of the person and whether the person is licensed as a chiropractor under Chapter 201, Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201503325

Bryan Snoddy

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Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6715



CHAPTER 80. GENERAL REGULATORY PROVISIONS

22 TAC §§80.1 - 80.4

The Texas Board of Chiropractic Examiners (Board) adopts new Chapter 80 and §§80.1 - 80.4, concerning General Regulatory Provisions, without changes to the proposed text as published in the July 17, 2015, issue of the *Texas Register* (40 TexReg 4524) and will not be republished.

The sections establish requirements and procedures related to general regulatory provisions.

These rules provide benefits to the public by ensuring honest, fair, effective and efficient administration of agency duties and responsibilities.

No comments were received concerning the adoption of these rules and their organization.

The rules are adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic to protect the public health and safety. The rules are also proposed pursuant to Texas Government Code Chapters 574, 655, 661, and 575 that legislatively mandate the adoption of certain provisions.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-6715

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**PART 8. TEXAS APPRAISER
LICENSING AND CERTIFICATION
BOARD**

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

22 TAC §153.1

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §153.1, Definitions, without changes to the proposed text as published in the June 5, 2015 issue of the *Texas Register* (40 TexReg 3535). The amendments adopt a definition of "real estate appraisal experience."

The reasoned justification for the amendments is to provide clarity for license holders.

No comments were received on the amendments as proposed.

The amendments are adopted under Texas Occupations Code §1103.151, which authorizes the TALCB to adopt rules relating to certificates and licenses, and §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the AQB.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 2015.

TRD-201503177

Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

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Proposal publication date: June 5, 2015

For further information, please call: (512) 936-3652

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**CHAPTER 155. RULES RELATING TO
STANDARDS OF PRACTICE**

22 TAC §155.2

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §155.2, Work Relating to Property Tax Protests, without changes to the proposed text as published in the June 5, 2015, issue of the *Texas Register* (40 TexReg 3537). The amendments correct a typographical error to reflect the proper statutory reference.

The reasoned justification for the amendments is to align the rule with the proper statutory reference.

No comments were received on the amendments as proposed.

The amendments are adopted under Texas Occupations Code §1103.151, which authorizes the TALCB to adopt rules relating

to certificates and licenses, and §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the AQB.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

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For further information, please call: (512) 936-3652

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**CHAPTER 159. RULES RELATING TO THE
PROVISIONS OF THE TEXAS APPRAISAL
MANAGEMENT COMPANY REGISTRATION
AND REGULATION ACT**

22 TAC §159.204

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §159.204, Complaint Processing, without changes to the proposed text as published in the June 5, 2015, issue of the *Texas Register* (40 TexReg 3538). The amendments implement a penalty matrix for complaints filed against an appraisal management company.

The reasoned justification for the amendments is to align the rule with the Board's statutory authority and provide clarity for license holders.

No comments were received on the amendments as proposed.

The amendments are adopted under Texas Occupations Code, §1104.051, which authorizes the TALCB to adopt rules necessary to administer Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 2015.

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Kristen Worman

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Texas Appraiser Licensing and Certification Board

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For further information, please call: (512) 936-3652

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.217

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.217 in Subchapter R, Real Estate Inspectors, without changes to the proposed text as published in the May 22, 2015, issue of the *Texas Register* (40 TexReg 2730).

The amendment to §535.217, Mailing Address and Other Contact Information, corrects the rule from 10 days to 30 days to match Section 1102.118(b) in the Texas Occupations Code which has a 30-day requirement.

The reasoned justification for the amendment is greater consumer protection and clarity.

No comments were received on this proposal as published.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this amendment are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the amendment.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 2015.

TRD-201503198

Kristen Worman

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Texas Real Estate Commission

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For further information, please call: (512) 936-3092



SUBCHAPTER T. EASEMENT OR RIGHT-OF-WAY AGENTS

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.400 in Chapter 535, General Provisions, with changes to the proposed text as published in the May 22, 2015, issue of the *Texas Register* (40 TexReg 2731). TREC adopts §535.402 without changes to the proposed text.

The amendments correct terminology, renumber for consistency, and provide a timeframe for responding to complaints for easement or right of way agents consistent with other license types.

No comments were received on this proposal as published. However, a non-substantive clarifying change was made to §535.400(i) qualifying that the email address given to the Com-

mission is the email address the registrant uses in business. This clarification brings the provision in line with a similar clarification made to Chapter 1101, Texas Occupations Code, adopted by the 84th Legislature.

The revision to the rules as adopted does not change the nature or scope so much that the rules as adopted could be deemed a different rule. The rules as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules as adopted do not impose more onerous requirements than the proposed rules.

The reasoned justification for the amendments is greater consumer protection and clarity.

22 TAC §535.400

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

The statutes affected by this amendment are Texas Occupations Code, Chapters 1101. No other statute, code or article is affected by the amendment.

§535.400. Registration of Easement or Right-of-Way Agents.

(a) A person who intends to be registered by the Commission as an easement or right-of-way agent must:

(1) file an application for the registration:

(A) through the online process approved by the Commission; or

(B) on the form prescribed by the Commission for that purpose; and

(C) submit the required fee under §535.404 of this subchapter.

(2) The Commission will reject an application submitted without a sufficient filing fee.

(3) The Commission may request additional information be provided to the Commission relating to an application.

(b) To be eligible for registration, an applicant must:

(1) meet the following requirements at the time of the application:

(A) be 18 years of age;

(B) meet any applicable residency requirement;

(C) be a citizen of the United States or a lawfully admitted alien;

(2) comply with the fingerprinting requirements of the Act;

(3) meet the honesty, trustworthiness, and integrity requirements under the Act;

(4) If the applicant is an individual, the applicant must provide the Commission with the individual's photograph not older than two years and signature before issuance of a registration certificate. The person may provide the photograph before the submission of an electronic application; and

(5) If the applicant is a business entity, the applicant must designate one of its managing officers who is registered under this title as agent for the business entity.

(c) Texas residents who enter military service and resume their Texas residence immediately upon separation from the military are not considered to have lost their Texas residence unless they have affirmatively established legal residence elsewhere.

(d) The fact that an individual has had disabilities of minority removed does not affect the requirement that an applicant be 18 years of age to be eligible for a license.

(e) The Commission will assign a registration number to each registrant and provide each registrant with a certificate of registration. Each registration issued by the Commission is valid until the last day of the month two years after the date the registration was issued.

(f) Termination of application. An application is terminated and is subject to no further evaluation or processing if the applicant fails to satisfy the requirements of subsection (b)(1) of this section within one year from the date the application is filed.

(g) The Commission may disapprove an application for registration with written notice to the applicant if the applicant has been convicted of a criminal offense which is grounds for disapproval of an application under §541.1 of this title or the applicant has engaged in conduct prohibited by the Act. Provided a timely written request for a hearing is made by the applicant in accordance with the Act, an applicant whose application for registration has been disapproved is entitled to a hearing. The hearing on the application will be conducted in accordance with §1101.364 of the Act and Chapter 533 of this title.

(h) Each registrant shall display the certificate of registration issued by the Commission in a prominent location in the registrant's place of business, as required by §1101.507 of the Act. If the registrant maintains more than one place of business, the registrant shall display either the certificate or a copy of the certificate in each place of business.

(i) Each registrant shall provide a mailing address, phone number, and email address used in business, if available, to the Commission and shall report all subsequent changes not later than the 10th day after the date of a change of any of the listed contact information. If a registrant fails to update the contact information, the last known contact information provided to the Commission is the registrant's contact information.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201503204

Kerri Lewis

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3092



22 TAC §535.402

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

The statutes affected by this amendment are Texas Occupations Code, Chapters 1101. No other statute, code or article is affected by the amendment.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201503205

Kerri Lewis

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3092



CHAPTER 539. RULES RELATING TO THE RESIDENTIAL SERVICE COMPANY ACT SUBCHAPTER I. FINANCIAL ASSURANCES

22 TAC §539.81

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §539.81, Funded Reserves, with changes to the proposal as published in the May 22, 2015, issue of the *Texas Register* (40 TexReg 2732).

This amendment accommodates cross jurisdictional issues with the Texas Department of Insurance, who regulates captive insurance companies, while continuing to ensure that the consumer protection afforded by the statute as originally passed is not eroded. A captive insurance company is a fairly new type of admitted insurer that was not contemplated when Tex. Occ. Code §1303.152 was enacted and has not been previously used in Texas to reinsure funds currently held in the required funded reserve.

The amendments specify that if a residential service company chooses to use a captive insurance company under Tex. Occ. Code §1303.152 to reinsure the liability remaining under the outstanding residential service contracts written in Texas in lieu of maintaining a funded reserve, that company can only do so for up to 67% of the required funded reserve.

Two comments were received from the same stakeholder. The stakeholder continued to express the concerns regarding the need and justification for the rule; however the rule as proposed provided a more workable framework if the percentage of funds to be retained in the funded reserve could be reduced. After further analysis, staff determined that reducing the retention amount from 33% to 25% would still provide adequate consumer protection in conjunction with the Texas Department of Insurance regulation of the captive insurance product. The Commission agreed.

The revision to the rule as adopted does not change the nature or scope so much that the rule as adopted could be deemed a different rule. The rule as adopted does not affect individuals other than those contemplated by the rule as proposed. The rule as adopted does not impose more onerous requirements than the proposed rule.

The amendments are adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commis-

sion to adopt and enforce rules necessary to administer Chapter 1303.

The statutes affected by these amendments are Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the amendments.

§539.81. *Funded Reserves.*

(a) Each residential service company licensed by the Commission shall maintain funded reserves in the amount required by Subchapter D of the Act. Accounts containing funded reserves must be identified as such and may not be encumbered or commingled with funds that are not reserves. Separate funded reserves are required for service contracts written in Texas unless the company's combined funded reserves meet the minimum reserve requirements of the Act, Subchapter D, calculated based on all outstanding contracts. Each company shall maintain a level of liquidity equal to or greater than the amount of its funded reserve.

(b) Funded reserves may be maintained in the following liquid assets only:

(1) in cash or savings deposits, time deposits, certificates of deposit, or money market accounts in solvent banks, savings and loan associations and credit unions and branches thereof, organized under the laws of the United States of America or its states;

(2) in investment grade notes, bonds, bills or other evidences of indebtedness or obligations of the United States of America or of a state or unit of local government or in a money market mutual fund which invests in the securities listed in this paragraph. For the purposes of this section, the term "investment grade" shall mean a security rated BBB and above by a nationally recognized securities rating organization such as Standard & Poor's; or

(3) in other governmentally backed financial instruments acceptable to the Commission, provided prior permission is obtained.

(c) If a residential service company reinsures the outstanding risk, as authorized under §1303.152 of the Act, through a captive insurance company as defined under §964.001, Insurance Code, the residential service company shall maintain at least 25% of the amount of the funded reserve required under subsection (a).

(d) Each residential service company shall complete a monthly reconciliation to confirm that it meets the minimum funded reserve requirements of the Act, Subchapter D. If the minimum reserve requirement has not been met, the residential service company shall take immediate steps to increase the amount of its funded reserve to meet the minimum funded reserve required.

(e) The Commission may suspend or revoke the license of a residential service company for failure to comply with this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 18, 2015.

TRD-201503196

Kerri Lewis

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3092



SUBCHAPTER P. COMPLAINTS

22 TAC §539.150

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §539.150 in Subchapter P, Complaints, without changes to the proposed text as published in the May 22, 2015, issue of the *Texas Register* (40 TexReg 2733). The amendment clarifies terminology for consistency throughout the rules.

The reasoned justification for the amendments is greater consumer protection and clarity.

No comments were received on this proposal as published.

The amendments are adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statutes affected by these amendments are Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201503206

Kerri Lewis

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3092



TITLE 25. HEALTH SERVICES

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §703.7, §703.8

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") adopts the amendments to §703.7 and §703.8 without changes to the proposed text as published in the June 5, 2015, issue of the *Texas Register* (40 TexReg 3543), and therefore will not be republished.

Reasoned Justification

Texas Health and Safety Code §102.251 provides rules for grant award procedures but does not include a process to defer grant award recommendations. The proposed amendments detail a process for both the Program Integration Committee and Oversight Committee to defer, with a stated explanation, grant awards within a fiscal year. With the proposed process, the Institute would be able to manage the potential for proposed grant award recommendations exceeding available grant funding for the year.

Summary of Public Comments and Staff Recommendations

The Institute accepted public comments in writing and by fax through July 6, 2015. No public comments were received.

Statutory Authority

The rule changes are adopted under the authority of the Texas Health and Safety Code Annotated, §102.108 and §102.251, which provides the Institute with broad rule-making authority to administer the chapter. Kristen Pauling Doyle, the Institutes General Counsel, has reviewed the proposed amendment and certifies the proposal to be within the Institutes authority to adopt.

There is no other statute, article or code that is affected by these rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2015.

TRD-201503274

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Effective date: September 9, 2015

Proposal publication date: June 5, 2015

For further information, please call: (512) 463-3190



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 21. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION

CHAPTER 675. OPERATIONAL RULES SUBCHAPTER B. EXPORTATION AND IMPORTATION OF WASTE

31 TAC §§675.20 - 675.23

The Texas Low-Level Radioactive Waste Disposal Compact Commission (Commission) adopts new §675.20 and the amendments to §§675.21 - 675.23 *with changes* to the proposed text, as published in the May 8, 2015, issue of the *Texas Register* (40 TexReg 2500).

Summary of the Factual Basis for the Adoption of the Amendments

The Commission initiated this rulemaking to review, comprehensively, the preliminary rules under which it had been operating since calendar year 2012. The objectives of this rulemaking are to simplify the processes by which applicants and petitioners seek Commission action; simplify and clarify the language of the rules; to activate and amend the rule for exportation of waste now that the Commission has made the determination required by former §675.22(l); and, in some cases, to correct grammatical errors found in the preliminary rules. During the time the Commission has been operating under the preliminary rules, it has evaluated the manner in which the rules operated and has identified aspects in which the rules can be improved.

The adopted amendments to the existing rules, coupled with the promulgation of a new rule collecting all definitions in a single rule that precedes all of the other rules, are designed to improve and streamline the process by which persons appearing before the Commission seek approval of their actions.

Section by Section Discussion

The Commission has adopted the change in the title of Chapter 675 from "Preliminary Rules" to "Operational Rules." In addition, the Commission adopts various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally are not specifically discussed in this preamble.

§675.20, Definitions

New §675.20 collects the majority of the definitions of terms used in the Commission's rules into a single rule.

§675.21, Exportation of Waste to a Non-Party State for Disposal

Amended §675.21 specifies the procedure that must be used, beginning on the effective date of the rule, by a party-state generator to petition the Commission for permission to export party-state waste to a non-party state for disposal. The amendments also: 1) distinguish petitioners for permission to export waste from applicants for agreements to import waste; 2) clarify the types of regulatory violations the Commission will consider when deciding whether a petitioner may export waste; and 3) reflect the Commission's adoption of an "allotment" approach to permits to export waste.

§675.22, Exportation of Waste to a Non-Party State for Management or Processing and Return to the Party States for Management or Disposal in the Compact Facility

Amended §675.22 clarifies its terms, recognizes that some party-state waste shipped out for management or processing is not returned to the generator, but is, instead, shipped directly to the Compact Facility for disposal, and increase the likelihood that the Commission will receive timely and legible reports.

§675.23, Importation of Waste from a Nonparty Generator for Disposal

Amended §675.23 clarifies its language; conforms the provisions of the rule more closely to the Texas Low-Level Radioactive Waste Disposal Compact; reduces the amount of time needed for the Commission to act on applications for the importation of non-compact waste for disposal at the Compact Facility; changes the mechanism by which applications for the importation of waste may be submitted to the Commission; and allows the delegation of certain decisions regarding minor amendments to existing agreements for the importation of waste to the Compact Commission chairman or his delegate, acting in consultation with a committee of the Commission or other persons employed or retained by the Commission for the purpose.

Amended subsection (f) (formerly subsection (h)) alters the manner in which applications are submitted to (rather than filed with) the Commission.

Amended subsection (f)(3) (formerly subsection (g)) implements changes to the rule to streamline the process of providing notice of applications for import agreements.

Amended subsection (f)(4) (formerly subsection (h)) ensures that comments made on any application for an import agreement at least one week before a meeting at which the Commission proposes to act on such application will be considered by the Commission. It also recognizes that the Commission may, but is not required to, consider comments filed less than one week before the meeting at which the Commission will consider the application.

Amended subsection (i) eliminates restrictions on the time within which the Commission, its staff, or its delegates must review any submitted applications for import agreements; modifies the application form for importation agreements to conform to changes in the TCEQ-issued license for the Compact Facility; clarifies the types of violations of the regulations of other administrative bodies that it will consider in acting on an application for an import agreement; and clarifies existing language.

Amended subsection (j) reduces the time for Commission action on applications for import agreements; clarifies that the Commission does not require or consider motions for rehearing; and makes clear that the Commission may deny an application for an import agreement if it is possible that the waste to be imported is or contains waste of international origin.

Amended subsection (k) is adopted solely for clarity.

Amended subsection (l) implements the Commission's decision to use an "allotment" method for import agreements; clarifies when shipments may begin to be made under an amended import agreement; adopts a plan for the delegation of authority to approve certain minor amendments; and eliminates the possibility of the Commission's imposing a fee for processing applications for import agreements under current rules.

Final Regulatory Analysis

The Commission has determined that the adopted rulemaking is not a "major environmental rule" as defined by Texas Government Code, §2001.0225.

Small Businesses and Microbusinesses

The Commission has determined that the adopted rules will not have an adverse economic impact on either small businesses or microbusinesses.

Takings

The Commission has determined that the adopted rules do not restrict or limit an owner's right to his or her real property that would otherwise exist in the absence of this action.

Summary of Changes made in the Proposed Rules after Comments

After reviewing comments received during the public comment period, the Commission: 1) revised the definition of "Commission" in proposed §675.20(1) to more closely conform to the definition in Texas law; 2) deleted the definition of "Compact waste disposal facility" in proposed §675.20(5) and renumbered subsequent paragraphs as appropriate; 3) reworded §675.21(j)(3) to change the methodology for consultation on minor amendments; 4) reworded §675.21(j)(4) to allow for the possibility that certain dates might not be known to persons making a report at the time the report is due at the Commission offices; 5) revised §675.22(b)(1) to recognize that certain information required to be reported would be reported after the fact rather than prospectively; 6) revised Annex A in §675.23(e)(1) in an effort to make it more user friendly; 7) reworded §675.23(l)(3) to change the

methodology for consultation on minor amendments; and, 8) revised certain reporting requirements in §675.23(m).

Public Comment

The public comment period on the proposed rules opened on May 8, 2015 and extended through midnight on June 22, 2015.

The Rules Committee of the Commission conducted a public meeting on the proposed amendments on May 29, 2015 at 9:30 a.m. in the Bluebonnet Room of the Doubletree Suites located at 303 West 15th Street, Austin, Texas 78701.

During the public comment period, the Commission received written comments from Advocates for Responsible Disposal in Texas (ARDT), Energy Solutions (ES), Waste Control Specialists (WCS), Kenneth Krieger (KK), and John Hageman (JH).

Summary and Response to Comments

COMMENT regarding proposed §675.20(1) -- WCS suggested that the definition of "Commission" provided should be replaced with the definition included in Texas Health and Safety Code (THSC), §403.0005(1) to conform to the definition provided in the THSC.

COMMISSION RESPONSE: The Commission agrees that confusion should be avoided and has amended the proposed definition in §675.20(1) to add the phrase "established by the Texas Low-Level Radioactive Waste Disposal Compact."

COMMENT regarding proposed §675.20(3) and (5) -- WCS and ES suggested that having closely related definitions of "Compact Facility" and "Facility" (paragraph (3)) on one hand and of "Compact Waste Disposal Facility" (paragraph (5)) on the other is confusing. WCS suggested deleting paragraph (5). ES suggested deleting paragraph (3).

COMMISSION RESPONSE: The Commission agrees that for the purposes of these rules, having two closely related definitions may be confusing. Accordingly, the Commission will delete paragraph (5) and retain paragraph (3) on the basis that paragraph (3) is the broader term and that it conforms to the definition in host-state law.

COMMENT regarding proposed §675.20(4) and (17) -- WCS suggested modifying the definition of "compact waste" (proposed paragraph (4)) to equate that term with "party-state waste" (proposed paragraph (17)) and eliminating the separate definition of "party-state waste."

COMMISSION RESPONSE: The Commission believes that both definitions may be useful and respectfully declines to make a change based on this comment.

COMMENT regarding proposed §675.20(9) -- WCS suggested replacing proposed paragraph (9), the definition of "generator" with the following: "a person who produces or processes low-level radioactive waste in the course of its activities, excluding persons who arrange for the collection, transportation, management, treatment, storage, or disposal of waste generated outside the party states, unless approved by the Commission." ES suggested that paragraph (9)(A)(vi) and (vii) be revised to include processors who become the legal generators of the waste, in part, to be consistent with Nuclear Regulatory Commission attribution rules, specifically Appendix G to 10 Code of Federal Regulations 20. KK suggested that proposed paragraph (9)(B) be modified so that all waste received by the types of entities listed before April 27, 2012 be deemed to be in-compact waste.

In his view, this is important to encourage entities who have held on to waste for a long time to dispose of it safely.

COMMISSION RESPONSE: The Commission notes that, while it is possible that some of the issues raised by the commenters may be relevant when the Commission conducts a rulemaking related to certain kinds of low-level radioactive waste, the Commission believes that, in the meantime, the carefully crafted definition of "generator" and the related methods for the determination of the identity of generators contained in proposed §675.20(9) are important for the ongoing operations of the Commission. The Commission respectfully declines to make any changes based on these comments.

COMMENT regarding proposed §675.20(13) -- ES suggested that volume reduction be included in the definition of the term "management."

COMMISSION RESPONSE: The Commission notes that rules related to volume reduction are in the province of the Texas Commission on Environmental Quality in accordance with Texas law and does not agree that it is appropriate to introduce the concept of volume reduction into its rule defining the term "management." The Commission respectfully declines to make any changes based on this comment.

COMMENT regarding §675.20 -- ES suggested that the "Commission's Technical Committee" be defined in this rule.

COMMISSION RESPONSE: The Commission has generalized the wording of §675.21(j)(3) and §675.23(l)(3) so that the term "Technical Committee" is no longer included in the rules as finally adopted.

COMMENT regarding proposed amendment to §675.21 -- ES suggested that the word "permit" be replaced throughout the rule with the word "petition" for clarity.

COMMISSION RESPONSE: The Commission respectfully does not agree with this suggestion. A "petition" is a document that is filed by a petitioner requesting permission to export waste. Therefore, the granted permission takes the form of a "permit" to export waste. The Commission believes that the rule would be more confusing, not less, if both documents were referred to as a petition and respectfully declines to make any change based on this comment.

COMMENT regarding proposed amendment to §675.21(b) -- ARDT suggested that the definition of "petitioner" should be moved to §675.20, to be included with the other definitions.

COMMISSION RESPONSE: The Commission believes that, in this particular instance, the definition should remain in the only rule in which it is used and respectfully declines to make any change based on this comment.

COMMENT regarding proposed amendment to §675.21(c) -- ARDT suggested that the subsection be modified to require submission of a petition or request to amend an order approving exportation of waste by either electronic mail or by UPS or FedEx, as is the case with reports required in §675.22(b).

COMMISSION RESPONSE: The Commission believes that, to ensure timely consideration of petitions to export and requests to amend orders approving exportation of party-state waste, it is necessary to require both types of service. The situation with respect to submission of petitions or requests to amend under §675.21(c) is more directly analogous to the submission of applications for importation agreements pursuant to §675.23(f) than

to filing reports under §675.2(b). The Commission respectfully declines to make any changes based on this comment.

COMMENT regarding proposed amendment to §675.21(g) -- WCS suggested that the rule provide that the Commission will act on petitions for exportation within 90 days after the petitions are posted to the Commission's website.

COMMISSION RESPONSE: While the Commission fully expects to act within 90 days of the posting of a petition on the Commission's website, it does not agree that it is appropriate to create artificial deadlines that could unnecessarily complicate matters in some situations. The Commission respectfully declines to make any changes based on this comment.

COMMENT regarding proposed amendment to §675.21(g)(1) -- ARDT suggested that the specific radionuclides listing in the form on the Commission's website should be eliminated so that the form conforms to this subsection as amended.

COMMISSION RESPONSE: It is not intended at this time that specific radionuclides be required to be listed in the application form. No change needs to be made with regard to this comment.

COMMENT regarding proposed amendment to §675.21(g)(10) -- WCS suggested deleting proposed subsection (g)(10) because the Commission is not a party to rate case proceedings, and that consideration of the elements in subsection (g)(4) related to economic impact should be sufficient.

COMMISSION RESPONSE: The Commission believes that it is important to consider all information that can be made available to it when it makes a decision with respect to export of waste to a non-party state for disposal and respectfully declines to make any change based on this comment.

COMMENT regarding proposed amendment to §675.21(g) -- WCS suggested adding a paragraph to subsection (g) permitting the Commission to consider whether the waste to be exported is "acceptable at the Compact Waste Facility." In connection with this suggestion, WCS notes that consideration of paragraph (11) ("projected effect on preservation of Compact Facility capacity for the party states") could always result in a conclusion favorable to exporting the waste.

COMMISSION RESPONSE: The Commission notes that §675.21(g)(1) - (12) calls for the consideration of a broad array of factors before reaching a decision with respect to an export petition and that, under §675.21(g)(12), the Commission may consider any other factor that it deems relevant to carry out the policy and purpose of the Compact. The Commission believes that an even-handed consideration of all elements set out in §675.21(g) will result in a fair result and respectfully declines to make any change based on this recommendation.

COMMENT regarding proposed amendment to §675.21(j)(4) -- ARDT suggested that this subsection be modified to eliminate the requirement that the generator include in the report the date or dates on which the exported waste was delivered to the disposal facility. ARDT contends that, if the waste is sent to a processor, the generator cannot comply with this requirement because the waste processor determines the shipment date.

COMMISSION RESPONSE: The Commission accepts this comment and has changed §675.21(j)(4) to provide that dates will be provided to the Commission by the permittee when the dates are available to the permittee.

COMMENT regarding proposed amendment to §675.22(b)(1) -- ARDT suggested that this subsection should be modified to reflect that the waste has actually been exported at this point.

COMMISSION RESPONSE: The Commission agrees with this suggestion and has modified the rule accordingly.

COMMENT regarding proposed amendment to §675.22(c) -- WCS suggested that the Commission clarify what reporting is required by promulgating a form to be used to satisfy the requirements of subsection (c). WCS also suggested that the Commission include in the subsection a reference to TCEQ's commingling rules.

COMMISSION RESPONSE: The Commission will consider whether to promulgate a form to be used in making this report and whether to include in the form some requirements related to TCEQ's commingling rules.

COMMENT regarding proposed amendment to §675.23 -- ES commented that, even with amendments, the rule does not properly address or resolve issues related to the importation of waste for disposal at the WCS "exempt" cell. Among other issues it raised, ES asserts that the Compact and the Commission's own rules require that §675.23 include the Commission's controls on "importation of low level waste for reclassification and disposal in the WCS's exempt cell."

COMMISSION RESPONSE: While the Commission may or may not agree with any or all of the considerations raised by ES with regard to what it refers to as "WCS's exempt cell," the Commission has made it clear that it intends to address at least some of the issues in a future rulemaking. During that rulemaking, the Commission will welcome comments from all interested parties. The Commission respectfully declines to take any action with respect to this set of recommendations by ES at this time.

COMMENT regarding proposed amendment to §675.23(b) -- ARDT suggested that this subsection should refer to Texas, as well as to Vermont. ARDT also commented that deleting the requirement that the Commission issue a report at least every 5 years establishing the Compact Facility's disposal capacity was unacceptable to Texas generators, who believe that the report is required to guarantee in-compact generators unlimited access to the Facility as stipulated in Article IV, section 4.01 of the Compact. ES commented that it was unclear what is meant by the term "Compact." It also generally comments that the Commission should be "making decisions based on constructed volume of the facility as opposed to approved expansion volumes of the facility."

COMMISSION RESPONSE: The Commission believes that the capacity rights of Texas generators are protected totally by the Compact as defined in §675.20(2). The Compact, in Article 4, section 4.01, provides that the host state shall have unlimited use of the facility over its operating life. In addition, nothing about the issuance of a report would guarantee any generator any degree of access to the Facility; the Compact itself guarantees Texas unlimited access. The Commission further notes that the Texas Commission on Environmental Quality is tasked by statute to provide a capacity study. The Commission respectfully declines to make any changes based on this recommendation.

COMMENT regarding proposed elimination of prior section §675.23(d) -- ES commented that Commission should "continue to track closely the capacity remaining for Texas and Vermont based on constructed landfill capacity, not on the approved expansion volume." It suggests that the Commission restore

prior §675.23(d) to the proposed amended rule and "require a more rigorous tracking of imported vs. party state waste, and encourage the industry norm of volume reduction."

COMMISSION RESPONSE: The Commission does not agree that prior §675.23(d) should be restored. The Commission believes that the issues covered by prior §675.23(d) are covered adequately by proposed §675.23(i)(5) and (11). The Commission respectfully declines to make any changes based on this comment.

COMMENT regarding proposed amendment to §675.23(e), Annex A -- WCS suggested eliminating the question concerning sealed sources in Section III because, under the sealed source packaging criteria of WCS's license, sealed sources will not be commingled with any other waste type.

COMMISSION RESPONSE: The Commission believes that it is important that its records reflect the use of sealed sources even though WCS's license may preclude commingling. The Commission respectfully declines to make any changes based on this comment. The Commission has made changes of an editorial nature to Annex A to the rule as referred to at §675.23(e)(1). The changes are non-substantive and are designed to make the form easier to understand and use.

COMMENT regarding proposed amendment to §675.23(i)(10) -- WCS suggested removal of this subsection, because the Commission is not a party to rate proceedings and WCS's comments on the economic impact of a proposed importation should be sufficient. ES commented that the Commission receives no information regarding the rates charged by the Facility Operator and wondered how the Commission had fulfilled this requirement in the past and would analyze and review future requests.

COMMISSION RESPONSE: The Commission does not agree with the change suggested by WCS. The Commission has a duty to the party states to consider the economic consequence of an importation agreement on rates to be charged party-state generators for disposal of their waste. The Commission respectfully declines to make any changes based on these comments.

COMMENT regarding proposed amendment to §675.23(i)(11) -- WCS suggested that the Commission approve agreements for the importation of more curies per year than the annual limit and monitor the disposal of actual curies during the course of the year because generators base their requests for agreements on estimated curie counts.

COMMISSION RESPONSE: The Commission believes that the current system is preferable because it requires more precision in the application process. The Commission respectfully declines to make any changes based on this comment.

COMMENT regarding proposed amendment to §675.23(l)(3) -- WCS suggested that the Commission's power to approve minor amendments to importation agreements be delegated to the Commission's executive director. WCS also suggested that changes of 10% or less in volume or curie amounts originally approved and that are also below 125 cubic feet and 125 curies, be considered a minor amendment.

COMMISSION RESPONSE: The Commission does not agree that it would be appropriate to delegate final authority to approve minor amendments to one person. The Commission believes that the proposed wording of the rule provides sufficient flexibility to approve minor amendments without the necessity of a Commission meeting. The Commission does not believe that it is appropriate to designate a level of volume or curies that automati-

cally would be considered minor amendments at this time. The Commission respectfully declines to make any changes based on this comment.

COMMENT regarding proposed amendment to §675.23(l)(5) -- WCS suggested reducing the posting period for amendments from 15 days to 10 days.

COMMISSION RESPONSE: The Commission does not agree that the posting period should be shortened. It believes that a 15-day period is an adequate period for public notice for a minor amendment and is short enough that it should not inconvenience an applicant. The Commission respectfully declines to make any changes based on this comment.

COMMENT regarding proposed amendment to §675.23(m) -- WCS suggested four deletions from subsection (m): removing the words "and stored" from the first sentence; removing the words "including the physical, radiological and chemical properties of the waste consistent with the identification required by the Compact Waste Facility license" from the first sentence; replacing the words "of each imported class of" with the word "the" in the second sentence; and eliminating the final sentence of the subsection.

COMMISSION RESPONSE: The Commission believes that it is important that the report continue to include for the information of the Commission the waste stored as well as the waste disposed during the quarter being reported. The Commission concurs that it is not necessary that the report include certain physical, radiological and chemical properties as required by the rule now in effect. The Commission believes it is important that the classes of waste disposed continue to be reported to it on a quarterly basis. The Commission believes that quarterly information concerning activities at the Compact Facility should be available to the public and will publish such information (including information reported by WCS and information obtained from the Texas Commission on Environmental Quality) on its website. The Commission has revised §675.23(m) in accordance with this response.

COMMENT regarding proposed amendment to §675.23(n) -- WCS suggested that the subsection be modified to permit all generators, not just small quantity generators, to use brokers.

COMMISSION RESPONSE: The Commission believes that the use of brokers should be limited to small quantity generators in light of THSC, §401.207(j). The Commission respectfully declines to make any changes based on this comment.

COMMENT: JH suggested that the rules be modified to allow for the possibility that radioactive material could come into the party states not as waste, but as useful radioactive material and then, at some later point, be declared waste by the person possessing it. JH did not identify any specific rule that JH believed should be changed.

COMMISSION RESPONSE: The Commission believes that the proposed rules and rule amendments address this situation, such that none of them need to be amended to address it. The Commission respectfully declines to make any changes based on this comment.

While comments were made and have been responded to that request changes and in some cases may express opposition to particular provisions as proposed, the Commission does not find that any person or entity commenting on the proposed rulemaking as published in the May 8, 2015, issue of the *Texas Register* is opposed generally to the adoption of the amendments to the Commission rules published on that date.

No written comments were submitted to the Rules Committee at the Public Meeting conducted on May 29, 2015.

Concise Restatement of Statutory Authority

Section 675.21 was adopted under P.L. 105-236 and THSC, Chapter 403 (Compact §3.05(4)), which grants the Commission rulemaking authority to carry out the terms of the Compact, and under §§3.05(7), 6.01, and 6.03 of the Compact, which authorizes the Commission to monitor the exportation of low-level radioactive waste and prohibit unauthorized exportation of waste. The amendment to §675.21 is adopted by the Commission pursuant to the same statutory authority.

Section 675.22 was adopted under P.L. 105.236 and THSC, Chapter 403 (Compact §3.05(4)), which grants the Commission rulemaking authority to carry out the terms of the Compact, and under §3.05(8) of the Compact, which authorizes the Commission to monitor the exportation of waste for the sole purpose of management or processing. The amendment to §675.22 is adopted by the Commission pursuant to the same statutory authority.

Section 675.23 was adopted under P.L. 105-236 and THSC, Chapter 403 (Compact §3.05(4)), which grants the Commission rulemaking authority to carry out the terms of the Compact, and under §§3.05(6), 6.02, and 6.03 of the Compact, which authorize the Commission to enter into an agreement for the importation of low-level radioactive waste into the compact for disposal and prohibit unauthorized importation of waste. The amendment to §67.23 is adopted by the Commission pursuant to the same statutory authority.

New §675.20 is adopted pursuant to P.L. 105-236 and THSC, Chapter 403 (Compact §3.05(4)) which grants the Commission the rulemaking authority to carry out the terms of the Compact.

§675.20. Definitions.

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

(1) The term "Commission," where used in this subchapter, means the Texas Low-Level Radioactive Waste Disposal Compact Commission established by the Texas Low-Level Radioactive Waste Disposal Compact.

(2) The term "Compact" refers to the agreement between the State of Texas and the State of Vermont to which Congress consented in Public Law 105-236, enacted September 20, 1998. The text of the Compact can be found in Texas Health and Safety Code, §403.006 and Vermont Statutes Annotated Title 10, §7069.

(3) The terms "Compact Facility" and "Facility" mean any site, location, structure, or property located in and provided by the host state for the purpose of disposal of low-level radioactive waste for which the party states are responsible.

(4) "Compact waste" means low-level radioactive waste that:

(A) is originally generated onsite in a host state or a party state; or

(B) is not generated in a host state or a party state but has been approved for importation into this state by the Commission under §3.05 of the Compact.

(5) The word "days" shall mean calendar days unless the rule in which it is used specifies otherwise.

(6) "Disposal" means the permanent isolation of low-level radioactive waste pursuant to requirements established by the United States Nuclear Regulatory Commission and the United States Environmental Protection Agency under applicable laws, or by the host state.

(7) The term "generate," when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.

(8) The term "generator" means a person who produces or processes low-level radioactive waste in the course of its activities, excluding persons who arrange for the collection, transportation, management, treatment, storage, or disposal of waste generated outside the party states, unless approved by the Commission. For purposes of this subchapter, the identity of a "generator" shall be determined in accordance with the following:

(A) For low-level radioactive waste acquired on or after April 27, 2012, and that is not of international origin:

(i) if a licensed manufacturer of sealed sources or devices chooses to accept from a customer a sealed source or device that it (or an entity that it acquired) manufactured, the manufacturer may declare that it is the generator when that source or device is disposed;

(ii) if a licensed manufacturer of sealed sources or devices accepts from a customer a sealed source or device manufactured by another entity, the customer will be considered the generator of the source or device when it is disposed;

(iii) if a licensed initial distributor of radioactive sealed sources or devices chooses to accept from a customer a sealed source or device that it distributed, the initial distributor may declare that it is the generator of that source or device when it is disposed;

(iv) if a licensed initial distributor of radioactive sealed sources or devices chooses to accept from a customer a sealed source or device that the distributor did not distribute, the customer will be considered the generator of the source or device when it is disposed;

(v) if a licensed distributor other than the initial distributor of the radioactive sealed sources or devices chooses to accept from a customer a sealed source or device, the customer will be considered the generator of that source or device when it is disposed;

(vi) if a licensed waste broker or waste processor chooses to accept radioactive materials from any customer, the customer will be considered the generator of those materials when they are disposed; and

(vii) when a licensed decontamination service provider provides decontamination services to any customer, the customer will be considered the generator of any waste generated by the provision of the decontamination service.

(B) A waste broker, waste processor, initial distributor, other distributor, decontamination service provider, or licensed manufacturer of sealed sources or devices who received radioactive materials from a customer before April 27, 2012 may complete TCEQ Form 20225 as the generator of that waste if it provides adequate documentation that the waste is not of international origin. Such waste may only be disposed of in the Compact Facility as party-state (in-compact) waste if the entity acting as the generator of the waste provides adequate documentation that the waste is from Texas or Vermont. If the entity acting as the generator of the waste cannot adequately document that the waste is from Texas or Vermont, the waste will be treated as non-party-state (out-of-compact) waste and will require import authorization in accordance with §675.23 of this title (relating to Importation of Waste from a Non-Party Generator for Disposal). To provide

the documentation described in this subparagraph, the entity acting as the generator of the waste may rely on various records, including, but not limited to, source/device leak tests, source/device inventories, transfer/receipt records, transportation manifests, purchasing records, or other records determined by the Commission to be suitable as documentation regarding the origin of the waste.

(C) If the customer of a waste broker, waste processor, initial distributor, other distributor, decontamination service provider, or licensed manufacturer of sealed sources or devices is considered the generator of waste under subparagraph (A) of this paragraph, the waste may not be disposed of in the Compact Facility unless the customer is a public, private or governmental entity located in the United States or a territory of the United States. The waste will be considered party-state waste (in-compact) only if the customer is located in Texas or Vermont; if the customer is located in any other state or territory of the United States, the waste will be considered non-party state waste (out-of-compact).

(D) If a licensed user, initial distributor, or manufacturer of sealed sources or devices is a generator of waste, that waste may be disposed of in the Compact Facility only if the generator is a public, private or governmental entity located in the United States.

(9) "Host county" means a county in the host state in which a disposal facility is located or is being developed.

(10) "Host state" means a party state in which a Compact Facility is located or is being developed. The state of Texas is the host state under the Compact.

(11) "Low-level radioactive waste" has the same meaning as that term is defined in Section 2(9) of the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 United States Code, §2021b(9)), or in the host state statute so long as the waste is not incompatible with disposal at the Compact Facility.

(12) "Management" means collection, consolidation, storage, packaging, or treatment.

(13) "Non-party compact waste" means low-level radioactive waste imported from a state other than a party state as authorized by §3.05(6) of the Compact.

(14) "Operator" means a person who operates a disposal facility.

(15) "Party state" means any state that has become a party in accordance with Article VII of the Compact. Texas and Vermont are the party states to the Compact.

(16) "Party-state waste" means low-level radioactive waste generated in a party state.

(17) "Person" means an individual, corporation, partnership, or other legal entity, whether public or private.

(18) A "small quantity generator" is a generator of low-level radioactive waste who generates no more than 100 cubic feet of such waste per year, provided that the curie level of such waste is minimal as compared to the curie limit in the Compact Facility's license as determined by the Commission.

(19) The acronym "TCEQ" means the Texas Commission on Environmental Quality and any successor entity.

(20) A "transporter" is a person who transports low-level radioactive waste.

(21) "Waste of international origin" means low-level radioactive waste that originates outside of the United States or a territory

of the United States, including waste subsequently stored or processed in the United States.

§675.21. Exportation of Waste to a Non-Party State for Disposal.

(a) Permit Required--No low-level radioactive waste generated within a party state shall be exported for disposal in a non-party state unless the Commission has issued an export permit allowing the exportation of that waste pursuant to this section.

(b) Petition Required--The term "petitioner" shall include a person who is a generator, a broker acting on behalf of one or more generators, an authorized representative of the Department of Defense, or the host state (when proposing to export low-level radioactive waste to a low-level radioactive waste disposal facility outside the party states). Each petitioner shall submit a petition for an export permit to the Commission.

(c) Form of Petition--The petition or a request to amend a permit shall be in writing and on a form promulgated by the Commission and posted on the Commission's website. A petitioner must submit its petition or request to amend a permit to the Commission and to the Compact Facility both by electronic mail and by United Parcel Service (UPS) or FedEx delivery service.

(d) Petitioners must receive the Commission's permission to export before exporting any waste out of the party states. No petition for the exportation of Class B or Class C waste for disposal in a non-party state will be approved unless the petitioner can show good cause.

(e) Notice of Petition--Export petitions submitted to the Commission will be posted to the Commission's website within five business days of their submission.

(f) Any person may submit comments on an export petition to the Commission by electronic mail or by sending a hard copy of the comments to the Commission using the UPS or FedEx delivery service. The Commission will consider all comments received at least one week before the meeting at which it considers action on the petition. The Commission may, but shall not be bound to, consider comments submitted less than one week before such a meeting.

(g) Review of Petition--After receiving the export petition and any comments about the petition, the Commission shall, no earlier than 30 days after the petition is posted and no later than 120 days after the petition is posted, act on the export petition, considering the following factors:

(1) The volume of waste proposed for exportation, the type of waste proposed for exportation by the generator, the approximate radioactivity of the waste, the time of the proposed exportation, and the location and name of the facility that will receive the waste for treatment and ultimate disposal;

(2) The policy and purpose of the Compact;

(3) The availability of the Compact Facility for the disposal of the waste involved;

(4) The economic impact on the host county, the host state, and the Compact Facility Operator of granting the export permit;

(5) The economic impact on the petitioner;

(6) Whether the low-level radioactive waste disposal compact or the state unaffiliated with such a compact in which the proposed disposal facility is located authorizes the importation of the waste being exported from the party state or states;

(7) The existence of unresolved violations associated with radioactive waste receipt, handling, processing, or transportation pending against the petitioner with any other regulatory agency with juris-

dition to regulate radioactive material, and any comments by the regulatory agency with which the petitioner has such unresolved violations;

(8) Any unresolved violation, complaint, unpaid fee, or past due report that the petitioner has with the Commission;

(9) Any relevant comments received from any interested person;

(10) The projected effect, if any, on the rates to be charged for disposal of in-compact waste;

(11) The projected effect on preservation of Compact Facility capacity for the party states; and

(12) Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact.

(h) Decision by the Commission--The Commission may: approve the export petition in whole or in part; deny the export petition in whole or in part; approve the export petition subject to terms and conditions selected by the Commission and included in the export permit; or request additional information needed for a decision. The Commission's decision to approve or deny the petition, either in whole or in part, or to approve the petition subject to the Commission's terms and conditions, is final without the filing of a motion for rehearing.

(i) Terms and Conditions--The Commission may include any reasonable terms or conditions in the export permit that it deems appropriate or necessary.

(j) Permit Duration, Amendment, Revocation, Reporting, and Assignment.

(1) An export permit shall be issued for the term specified in the permit and shall remain in effect for that term unless amended, revoked, or canceled by the Commission. The specified term in the export permit shall not authorize shipments of waste by the petitioner to occur beyond the end of the fiscal year for which the export permit is approved.

(2) The Commission may add requirements or limitations to or delete requirements or limitations from the permit. Before doing so, the Commission will provide the permit holder and the Compact Facility Operator five business days' notice, so that they may comment on the proposed amendments to the permit. The Commission may also provide the permit holder a reasonable time to make any changes necessary to comply with the additional requirements or limitations imposed by the Commission. No exports will be allowed under any amended export permit until:

(A) the amendment to the export permit has been executed by both the permittee and the Commission; and

(B) the permittee has made any changes necessary to comply with any additional requirements that the Commission has imposed.

(3) The Commission's Chair or his or her delegate may review applications for amendments and, in consultation with a committee of the Commission or other persons employed by or retained by the Commission for the purpose approve minor amendments without a vote of the entire Commission, although the Chair or his or her delegate has the discretion to refer an application for an amendment to the full Commission for a decision. Notwithstanding the foregoing, the Commission will not approve an amendment that will extend the date on which an export permit expires beyond the end of a fiscal year.

(4) Not later than October 31 of each calendar year, a person who holds an export permit shall file with the Commission a report concerning the waste exported in the immediately preceding pe-

riod from September 1 to August 31. The report shall specify the volume of low-level radioactive waste actually exported for disposal, the total radioactivity of the waste exported, the date or dates on which the waste was exported, and the name and location of the disposal facility to which the exported waste was delivered, along with the date or dates on which it was delivered to that facility. If the dates of exportation and the dates of delivery are not available at the time the report is due, the permittee will make the dates available to the Commission within 10 days of those dates being made available to the permittee. Failure to timely file this report may result in denial of future export petitions.

(5) An export permit is not assignable or transferable to any other person.

(k) Agreements to Export--Nothing in this subchapter shall limit the authority of the Commission to enter into agreements with the United States, other regional compact commissions, or individual states for the exportation or management of low-level radioactive waste. Nothing in this subchapter shall be construed to prohibit the storage or management of low-level radioactive waste by an in-compact generator, or its disposal pursuant to 10 Code of Federal Regulations §20.2002.

§675.22. Exportation of Waste to a Non-Party State for Management or Processing and Return to the Party States for Management or for Disposal in the Compact Facility.

(a) Where the sole purpose of the exportation of low-level radioactive waste is to manage or process the waste for recycling or waste reduction and to return the waste to the party states for disposal in the Compact Facility, party-state generators are not required to obtain an export permit.

(b) The generator exporting such waste must, however, file a report with the Commission no later than 10 days after the shipment of the waste described in subsection (a) of this section. Reports may be submitted by United Parcel Service (UPS), FedEx delivery service, or by e-mail. A generator may satisfy the reporting requirement by timely submitting to the Commission Forms 540 and 541 promulgated by the United States Nuclear Regulatory Commission, as applicable, with supplemental data indicating the types of waste management employed at the facility to which the waste is being shipped. Alternatively, generator reports shall include the following information:

(1) The volume of waste exported, the type, physical and chemical form of waste exported, the approximate radioactivity of the waste, and the specific radionuclides contained therein;

(2) The location and name of waste processing facility or facilities receiving and processing the waste, the type of waste management employed at each waste management facility, and whether the exported waste is to be mixed or commingled with waste from other generators.

(c) When the exported waste is either returned to the generator or shipped to the Compact Facility, the generator shall file a report informing the Commission of the volume, physical form, and activity of the waste returned to the party-state generator or shipped to the Compact Facility. The generator may rely on information provided to it by the processor who ships the waste back to the Compact Facility when making its report.

§675.23. Importation of Waste from a Non-Party Generator for Disposal.

(a) It is the policy of the Commission to:

(1) promote the health, safety, and welfare of the citizens and the environment of Texas and Vermont;

(2) limit the number of facilities needed to effectively, efficiently, and economically manage low-level radioactive waste;

(3) distribute the costs, benefits, and obligations among the party states; and

(4) refuse to allow the importation of low-level radioactive waste of international origin for disposal at the Compact Facility.

(b) Vermont's disposal capacity reserve is 20% of the Compact Facility maximum volume as stated in the Compact, and this capacity shall not be reduced by non-party waste. The Commission will utilize the volumetric and curie limits set out in Texas Health and Safety Code (THSC), §401.207, as guidelines with respect to authorizing the importation of waste.

(c) If any state other than Texas or Vermont becomes a member of the Compact in accordance with Article VII of the Compact, the waste from that state or states shall be deposited in space reserved for non-party compact waste, to the extent such space is available at the time the waste is to be deposited; in no event shall waste from that state be deposited in space reserved for waste generated in Texas or Vermont.

(d) Agreement Required. No person shall import any low-level radioactive waste for disposal that was generated in a non-party state unless the Commission has entered into an agreement for the importation of that waste pursuant to this section. No radioactive waste of international origin shall be imported into the Compact Facility for disposal. Violations of this subsection may result in prohibiting the violator from disposing of low-level radioactive waste in the Compact Facility, or in the imposition of penalty surcharges on shipments to the facility, as determined by the Commission.

(e) Form of Import Application and Terms of Import Agreement. Annex A in paragraph (1) of this subsection sets out the form that must be completed by an applicant to import low-level radioactive waste. The form will also be posted on the Commission's website and may contain minor modifications. The act of submitting an application means that the applicant is willing to enter into an agreement with the Commission containing at a minimum the terms set forth in the Term Sheet which is Annex B in paragraph (2) of this subsection.

(1) Annex A.

Figure: 31 TAC §675.23(e)(1)

(2) Annex B.

Figure: 31 TAC §675.23(e)(2)

(f) Submission of an Application for an Import Agreement. A person who is a generator, a broker acting on behalf of one or more small quantity generators, or an authorized representative of the Department of Defense shall submit an application to the Commission by electronic mail; an additional copy of the application must also be sent to the Commission through the United Parcel Service (UPS) or FedEx delivery service. The applicant may not ship any waste for disposal under the importation agreement sought until the Commission has formally elected to enter into an agreement with the applicant and both parties have executed the agreement. In addition, the applicant shall:

(1) certify that the waste acceptance criteria promulgated by the Texas Commission on Environmental Quality (TCEQ) will be met for the proposed waste importation; and

(2) deliver to the Compact Facility Operator and TCEQ a copy of the application (and any supplements or amendments thereto) by electronic mail at the same time the applicant submits the application to the Commission. The applicant must also send a hard copy of the application to the Compact Facility Operator and TCEQ through the UPS or FedEx delivery service.

(g) Notice of Applications for Import Agreements. All applications for import agreements will be posted to the Commission's website within five business days of their submission.

(h) Comments on Applications for Import Agreements. Any person may submit comments on an application for an import agreement by electronic mail or by use of the UPS or FedEx delivery service after the application is posted on the Commission's website. The Commission will consider all comments received at least one week before the meeting at which it considers action on the application. The Commission may, but shall not be bound to, consider comments submitted less than one week before such a meeting.

(i) Review of Applications for Import Agreements. The Commission, a committee of the Commission, or other persons employed or retained by the Commission shall, after the posting of the application for an import agreement on the Commission's website, review the application for an import agreement utilizing the following factors:

(1) The volume, type, physical form, and total radioactivity of the waste proposed for importation;

(2) The policy and purpose of the Compact, as set out in Public Law 105-236, a federal law known as the "Texas Low-Level Radioactive Waste Disposal Compact Consent Act"; in THSC, §403.006, the Texas Low-Level Radioactive Waste Disposal Compact; and 10 V.S.A. §7069, the Texas Low-Level Radioactive Waste Disposal Compact;

(3) The economic impact, including both potential benefits and liabilities, on the host county, the host state, other party states, the in-compact generators, and the Compact Facility Operator of entering into the import agreement;

(4) Whether the Compact Facility Operator has obtained authorization from TCEQ to dispose of the proposed waste;

(5) The effect of the Commission's approval of the proposed import agreement on the Compact Facility's total annual volume;

(6) The existence of unresolved violations associated with radioactive waste receipt, storage, handling, management, processing, or transportation pending against the applicant with any other regulatory agency with jurisdiction to regulate radioactive material, and any comments by the regulatory agency with which the applicant has unresolved violations;

(7) Any unresolved violation, complaint, unpaid fees, or past due report that the applicant has with the Commission;

(8) Any relevant comments received from any person;

(9) The generator of the waste and any necessary authorization of an applicant to export;

(10) The projected effect on the rates to be charged for disposal of party-state compact waste;

(11) Whether by acceptance of the waste for disposal, the Compact Facility will remain below the applicable annual and total volume and curie capacity disposal limits set forth in THSC, §401.207;

(12) To the extent applicable, compliance with the rules related to commingling adopted by TCEQ in coordination with the Commission pursuant to THSC, §401.207(k); and

(13) Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact.

(j) Decision by the Commission. No earlier than 35 days after an application is posted and no later than 100 days after it is received, the Commission shall take one of the following actions on the applica-

tion for a proposed importation agreement, in whole or in part: approve the proposed agreement; deny the proposed agreement; approve the proposed agreement subject to terms and conditions as determined by the Commission; or request additional information needed for a decision. The Commission's decision to approve in whole or in part, deny, or approve subject to terms and conditions is final without the filing of a motion for rehearing. However, after the Commission has acted on an applicant's proposed importation agreement, an applicant immediately may file another application. The Commission may deny an application for any of the following reasons:

(1) Lack of current or anticipated capacity beyond that required by party-state generators;

(2) The waste destined for the facility is not in accord with the license issued by TCEQ to the Compact Facility;

(3) The shipment potentially contains waste of international origin as defined in THSC, §401.2005(9); or

(4) Any other relevant issue.

(k) Terms and Conditions. The Commission may include any terms or conditions in the import agreement reasonably related to furthering the policy and purpose of the Compact including, but not limited to, the policies referenced in subsection (a) of this section.

(l) Importation Agreement Duration, Amendment, Revocation, Indemnification, Reporting, and Assignment.

(1) An importation agreement shall remain in effect for the term specified in the agreement, which term shall end on August 31 of the fiscal year for which the agreement is approved. The importation agreement shall remain in effect as approved unless amended by agreement of the Commission and the applicant, or revoked by the Commission prior to importation. A condition of every importation agreement shall be that any generator of low-level radioactive waste must agree to comply with §8.03 of the Compact. In addition, every importation agreement approved by the Commission shall include a condition requiring the Compact Facility Operator to receive written certification from the TCEQ that the waste is authorized for disposal under the license prior to the acceptance of waste under the importation agreement.

(2) The Commission may revoke or amend an agreement on its own motion or in response to an application by the agreement holder. When the Commission amends an importation agreement on its own motion, it may provide a reasonable time to allow the agreement holder and the Compact Facility Operator to make the changes necessary to comply with any additional requirements imposed by the Commission. No imports shall be allowed under any amended agreement for the importation of waste until:

(A) the amendment to the importation agreement has been executed by both the Commission and the agreement holder; and

(B) the agreement holder has made any changes necessary to comply with additional requirements imposed by the Commission.

(3) The Commission's Chair or his or her delegate may review applications for minor amendments and, in consultation with a committee of the Commission or other persons employed by or retained by the Commission for the purpose, may approve them without a vote of the entire Commission, although the Chair or his or her delegate has the discretion to refer the application for the amendment to the full Commission for a decision. The following changes are considered to be minor amendments: inclusion of additional compacts or unaffiliated states, territories, possessions, or districts of the United States from which waste will be shipped; inclusion of an additional waste stream; a change in waste form; and inclusion of an additional type

of generator. If the holder of an importation agreement seeks to add points of origin of the waste to be disposed of in the Compact Facility, the agreement holder must also provide export authorization, as necessary, from a compact to which the state being added is a party. The Commission will not treat an application for amendment as a request for a minor amendment simply because the applicant has described the amendment as "minor." If the Chair or his or her delegate, in consultation with a committee of the Commission or other persons employed by or retained by the Commission for the purpose, decides that an application purporting to be an application for a minor amendment is actually an application for a major amendment, the Commission will return the application to the applicant who may resubmit the application as an application for a major amendment.

(4) Notice of Applications for Amendments to Import Agreements. All applications for amendments to import agreements, including applications for minor amendments, shall be posted to the Commission's website within five business days of their submission.

(5) Commission Decisions on Applications for Amendments to Import Agreements. If an application is for a minor amendment, neither the Chair nor his or her delegate will act on the application before the 15th calendar day after the posting of the application for amendment. The Commission will act on applications for major amendments in the same manner that it acts on original applications for import agreements and within the same time period. An import agreement is not assignable or transferable to any other person. The Commission's action, or that of the Chair or his or her delegate, on an application for amendment to an import agreement is final without the filing of a motion for rehearing.

(m) The Compact Facility Operator shall file with the Commission a Quarterly Import Report, no later than 30 days after the end of each calendar quarter, describing the imported waste that was disposed and stored under the import agreement during the quarter by the Compact Facility. Each Quarterly Import Report will provide the identity of the generator, the manifested volume and activity of each imported class of waste (A, B, and C), the state or United States Territory of origin, and the date(s) of waste disposal. The Quarterly Report shall provide this information for the imported waste disposed of during the most recent quarter, as well as the cumulative information for imported waste disposed of in prior quarters under this Agreement. The Commission shall publish quarterly on its website a report derived from the information provided to it by the Compact Facility Operator as well as from the TCEQ.

(n) Small Quantity Generators. A small quantity generator may use a broker to file import applications and proposed agreements with the Commission on its behalf. Such applications and proposed agreements shall comply in all respects with this section.

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

Filed with the Office of the Secretary of State on August 20, 2015.
TRD-201503248
Leigh Ing
Executive Director
Texas Low-Level Radioactive Waste Disposal Compact Commission
Effective date: September 9, 2015
Proposal publication date: May 8, 2015
For further information, please call: (512) 239-6087



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 367. CONTINUING EDUCATION

40 TAC §367.1, §367.3

The Texas Board of Occupational Therapy Examiners adopts amendments to §367.1, concerning continuing education, and §367.3, concerning the continuing education audit, without changes to the proposed text as published in the May 29, 2015, issue of the *Texas Register* (40 TexReg 3104). The rules will not be republished.

The amendment to §367.1 will allow for licensees to repeat courses as long as such are in accordance with the criteria established by the amendment. The amendment to §367.3 will clarify documentation requirements and the required information documentation must contain as it regards continuing education requirements.

The amendment to §367.1 clarifies requirements for continuing education and adds the provision that each continuing education activity may be counted only one time in two renewal cycles or a total of four years. The adopted amendment to §367.3 clarifies requirements for the audit and for continuing education documentation. In addition, the amendment adds that the name of the authorized signer must be included on the continuing education documentation and that when continuing education units (CEUs), professional development units (PDUs), or other units or credits are listed on the documentation, such must be accompanied by documentation from the continuing education provider noting the equivalence of the units or credits in terms of contact hours.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2015.
TRD-201503355
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: October 1, 2015
Proposal publication date: May 29, 2015
For further information, please call: (512) 305-6900



CHAPTER 369. DISPLAY OF LICENSES

40 TAC §369.1, §369.2

The Texas Board of Occupational Therapy Examiners adopts amendments to §369.1 and §369.2, concerning display of licenses and changes of name or address, without changes to the proposed text as published in the May 29, 2015, issue of the *Texas Register* (40 TexReg 3105). The rules will not be republished.

The amendments to these sections will clarify existing policies with regard to the display of licenses and changes of name and address.

A change to §369.1 will allow for new licensees, upon verification of their licensure status and expiration date on the Board's verification page, to provide services. Changes to the section also clarify the process to request a replacement license. Changes to §369.2 clarify name changes. The amendments include cleanups and grammatical revisions, as well.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2015.

TRD-201503356

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: October 1, 2015

Proposal publication date: May 29, 2015

For further information, please call: (512) 305-6900



CHAPTER 373. SUPERVISION

40 TAC §373.2, §373.3

The Texas Board of Occupational Therapy Examiners adopts amendments to §373.2 and §373.3, concerning supervision requirements for temporary licensees and occupational therapy assistants, without changes to the proposed text as published in the May 29, 2015, issue of the *Texas Register* (40 TexReg 3108). The rules will not be republished.

The amendments will clarify supervision requirements for temporary licensees and for occupational therapy assistants. The

amendments include grammatical revisions and cleanups, as well.

The amendment to §373.2 reorganizes the section to clarify supervision requirements for temporary licensees and to clarify that new licensees, upon verification of their licensure status and expiration date on the Board's verification page, may provide services according to the conditions of the license. A provision has also been added requiring that occupational therapists who hold a temporary license must record their required supervision on a Supervision Record.

The amendment to §373.3 reorganizes and clarifies supervision requirements for occupational therapy assistants and includes changes to required supervision hours and creates a category of supervision with hours reduced from those currently in the rule section. The amendment also clarifies the requirement that an occupational therapy assistant must be able to contact an occupational therapist who is available to answer questions about the client's intervention at the time of the provision of occupational therapy services.

One comment was received by the Board from the Texas Occupational Therapy Association commenting that the supervision language looked burdensome, but that much of it looked like existing language being moved around. The Board acknowledged the comment and made no changes to the amendments based on the comment. The language of the amendments remains the same as was initially proposed.

The amendments are adopted under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2015.

TRD-201503358

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: October 1, 2015

Proposal publication date: May 29, 2015

For further information, please call: (512) 305-6900





REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

State Securities Board

Title 7, Part 7

Chapter 109. Transactions Exempt from Registration

Chapter 111. Securities Exempt from Registration

Chapter 139. Exemptions by Rule or Order

The State Securities Board (Agency), beginning September 2015, will review and consider for readoption, revision, or repeal Chapter 109, Transactions Exempt from Registration; Chapter 111, Securities Exempt from Registration; and Chapter 139, Exemptions by Rule or Order, in accordance with Texas Government Code, §2001.039. The rules to be reviewed are located in Title 7, Part 7 of the Texas Administrative Code.

The assessment made by the Agency at this time indicates that the reasons for initially adopting the chapters continue to exist.

The Agency's Board will consider, among other things, whether the reasons for adoption of these rules continue to exist and whether amendments are needed. Any changes to the rules proposed by the Agency's Board after reviewing the rules and considering the comments received in response to this notice will appear in the "Proposed Rules" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this notice of intention to review may be submitted in writing, within 30 days following the publication of this notice in the *Texas Register*, to Marlene Sparkman, General Counsel, P.O. Box 13167, Austin, Texas 78711-3167 or sent by facsimile to Ms. Sparkman at (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. Comments will be reviewed and discussed in a future Board meeting.

TRD-201503419

John Morgan

Securities Commissioner

State Securities Board

Filed: August 26, 2015



Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 53, Regional Education Service Centers, Subchapter AA, Commissioner's Rules, §53.1001, Board of Directors, and §53.1002, Charter School Representation on Board of Directors, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC §53.1001 and §53.1002 in the June 12, 2015 issue of the *Texas Register* (40 TexReg 3669).

The TEA finds that the reasons for adopting 19 TAC §53.1001 and §53.1002 continue to exist and readopts the rules. The TEA received comments related to the review of §53.1001 and §53.1002. Following is a summary of the public comments received and the corresponding agency response.

Comment: The superintendents of Springlake-Earth Independent School District (ISD), Magnolia ISD, Elgin ISD, Abernathy ISD, Mt. Pleasant ISD, and Hughes Springs ISD; one school board president; and one school board member commented that the current rules should remain in place and unchanged. The superintendent of Elgin ISD stated that education service centers (ESCs) benefit public education and that allowing local school boards to have input in selecting ESC board members provides for transparency and accountability. A board member of Ralls ISD stated that the current process also allows for local control.

Agency Response: The agency agrees that the process currently in place for electing ESC boards of directors works well by allowing for local input and transparency. The agency agrees that the reasons for maintaining rules regarding ESC boards of directors continue to exist and no changes should be made.

No changes to 19 TAC §53.1001 and §53.1002 are necessary as a result of the review.

This concludes the review of 19 TAC Chapter 53.

TRD-201503436

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: August 26, 2015



State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 233, Categories of Classroom Teaching Certificates, pursuant to the Texas Government

Code, §2001.039. The SBEC proposed the review of 19 TAC Chapter 233 in the July 3, 2015 issue of the *Texas Register* (40 TexReg 4379).

Relating to the review of 19 TAC Chapter 233 the SBEC finds that the reasons for adoption continue to exist and readopts the rules. The SBEC received comments related to the review of Chapter 233. Following is a summary of the public comments received and the corresponding responses.

Comment: Two individuals commented that 19 TAC §233.13 and §233.14, regarding certain career and technical education (CTE) certificates requiring experience and preparation in a skill area, be changed to allow individuals with a bachelor's degree in criminal justice with no work experience the opportunity to obtain certification.

Board Response: The SBEC agreed that the qualifications for criminal justice certification are an issue for which it is appropriate to begin the rulemaking process to determine whether amendments to Chapter 233 are necessary. The Texas Education Agency (TEA) staff will begin the rulemaking process with stakeholder meetings prior to the SBEC meeting in October. The SBEC determined, however, that the reasons for initially adopting Chapter 233 continue to exist, regardless of whether amendments regarding criminal justice certification results from the rulemaking process.

Comment: An individual commented that 19 TAC §233.13 and §233.14 should require a person to have at least a bachelor's degree in order to teach criminal justice in Texas middle and/or high schools.

Board Response: The SBEC agreed that the qualifications for criminal justice certification are an issue for which it is appropriate to begin the rulemaking process to determine whether amendments to Chapter 233 are necessary. The TEA staff will begin the rulemaking process with stakeholder meetings prior to the SBEC meeting in October. The SBEC determined, however, that the reasons for initially adopting Chapter 233 continue to exist, regardless of whether amendments regarding criminal justice certification results from the rulemaking process.

Comment: An individual commented that changes should be adopted to allow individuals with a bachelor's degree in criminal justice or with a bachelor's degree to seek Texas state teacher certification without the work approval as it is currently required in 19 TAC §233.14 in order to teach criminal justice in middle and/or high schools.

Board Response: The SBEC agreed that the qualifications for criminal justice certification are an issue for which it is appropriate to begin the rulemaking process to determine whether amendments to Chapter 233 are necessary. The TEA staff will begin the rulemaking process with stakeholder meetings prior to the SBEC meeting in October. The SBEC determined, however, that the reasons for initially adopting Chapter 233 continue to exist, regardless of whether amendments regarding criminal justice certification results from the rulemaking process.

Comment: An individual commented that House Bill (HB) 2205, 84th Texas Legislature, 2015, allows individuals with education alone to get a CTE teacher permit and no longer requires work experience approval. The commenter added that in the past a person had to have two to eight years of work experience approval.

Board Response: The SBEC agreed that effective September 1, 2015, HB 2205, 84th Texas Legislature, 2015, allows a school district board of trustees to issue a school district teaching permit to a person who will teach only noncore academic courses in CTE based on qualifications certified by the superintendent of the school district. Qualifications must include demonstrated subject matter expertise such as professional work experience, formal training and education, holding an active professional relevant industry license, certification, or registration, or any combination of work experience, training and education, or industry license, certification, or registration, in the subject matter to be

taught. However, the provisions of Chapter 233 do not address school district teaching permits. The provisions of HB 2205, 84th Texas Legislature, 2015, are, therefore, outside the scope of this rule review.

This concludes the review of 19 TAC Chapter 233.

TRD-201503361

Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification

Filed: August 24, 2015



The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 244, Certificate of Completion of Training for Appraisers, pursuant to the Texas Government Code, §2001.039. The SBEC proposed the review of 19 TAC Chapter 244 in the July 3, 2015 issue of the *Texas Register* (40 TexReg 4379).

Relating to the review of 19 TAC Chapter 244 the SBEC finds that the reasons for adoption continue to exist and readopts the rules.

The SBEC received no comments related to the review of 19 TAC Chapter 244.

This concludes the review of 19 TAC Chapter 244.

TRD-201503362

Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification

Filed: August 24, 2015



Department of Information Resources

Title 1, Part 10

The Texas Department of Information Resources (department) has completed its review of 1 Texas Administrative Code (TAC) Chapter 204, relating to Interagency Contracts for Information Resources, pursuant to §2001.039, Texas Government Code, which requires agency rules to be reviewed at least every four years. The department determined that the reasons for initially adopting 1 TAC Chapter 204 continue to exist. The department, therefore is readopting Chapter 22, concerning Interagency Contracts.

Notice of the rule review was published in the March 13, 2015 issue of the *Texas Register* (40 TexReg 1527). No comments were received as a result of that notice.

The department's review of 1 TAC Chapter 204 is concluded.

TRD-201503282

Martin H. Zelinsky
General Counsel
Department of Information Resources

Filed: August 21, 2015



Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy adopts the review of Chapter 291 (§§291.101 - 291.105) concerning Non-resident Pharmacy (Class E), pursuant to the Texas Government Code §2001.039, regarding Agency

review of Existing Rules. The proposed review was published in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4225).

No comments were received.

The agency finds the reason for adopting the rules continues to exist.

TRD-201503412

Gay Dodson

Executive Director

Texas State Board of Pharmacy

Filed: August 25, 2015

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The Texas State Board of Pharmacy adopts the review of Chapter 295 (§§295.1 - 295.9, 295.11 - 295.13, 295.15) concerning Pharmacists, pursuant to the Texas Government Code §2001.039, regarding Agency review of Existing Rules. The proposed review was published in the June 26, 2015, issue of the *Texas Register* (40 TexReg 4225).

No comments were received.

The agency finds the reason for adopting the rules continues to exist.

TRD-201503411

Gay Dodson

Executive Director

Texas State Board of Pharmacy

Filed: August 25, 2015

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State Securities Board

Title 7, Part 7

Chapter 107. Terminology

Chapter 127. Miscellaneous

Chapter 131. Guidelines for Confidentiality of Information

Pursuant to the notice of proposed rule review published in the June 5, 2015, issue of the *Texas Register* (40 TexReg 3577), the State Securities Board (Board) has reviewed and considered for readoption, revision, or repeal all sections of the following chapters of Title 7, Part 7 of the Texas Administrative Code (TAC), in accordance with Texas Government Code, §2001.039: Chapter 107, Terminology; Chapter 127, Miscellaneous; and Chapter 131, Guidelines for Confidentiality of Information.

The Board considered, among other things, whether the reasons for adoption of these rules continue to exist. After its review, the Board finds that the reasons for adopting these rules continue to exist and readopts these chapters, without changes, pursuant to the requirements of the Texas Government Code.

No comments were received regarding the readoption of Chapters 107, 127, and 131.

This concludes the review of 7 TAC Chapters 107, 127, and 131.

TRD-201503423

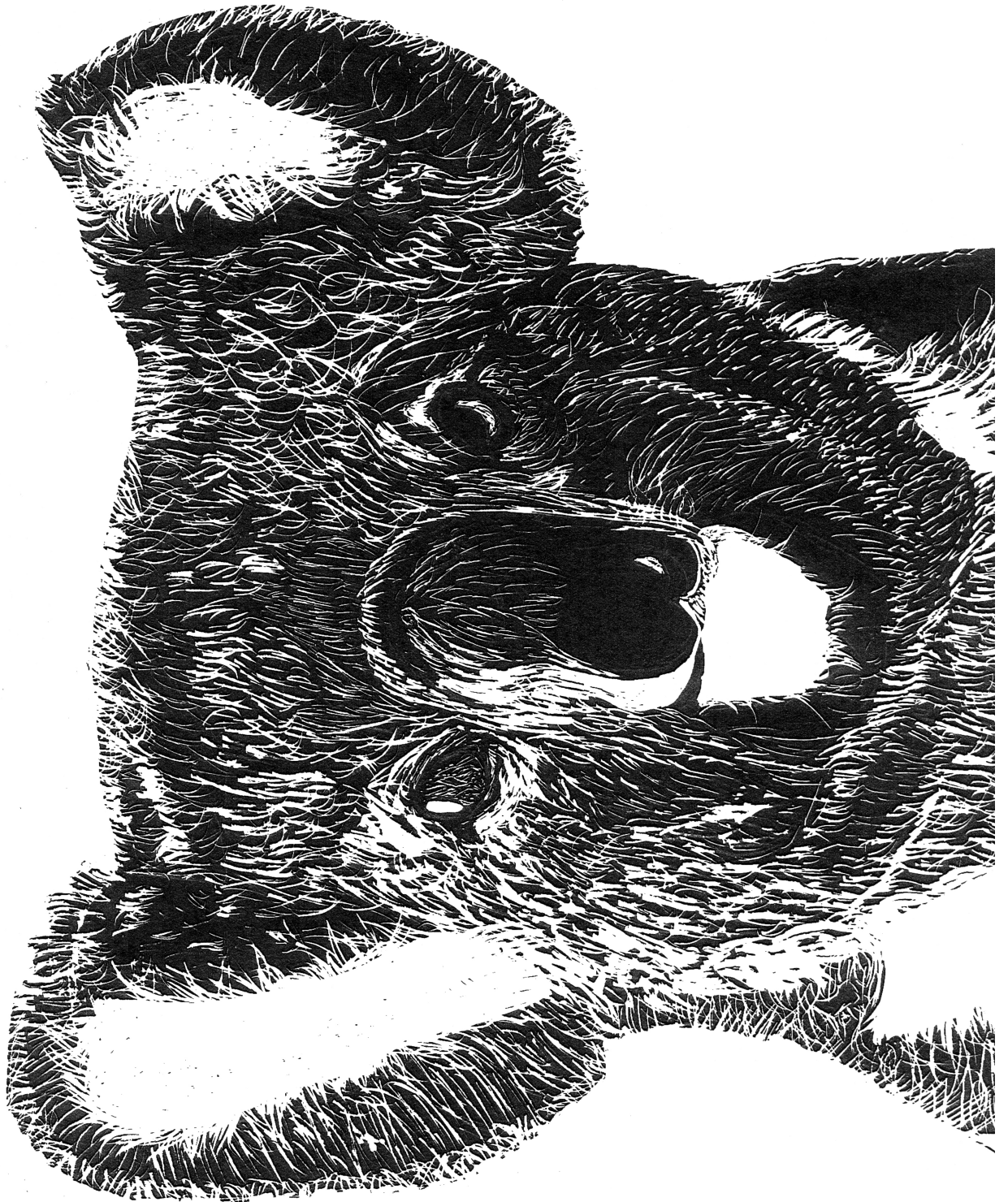
John Morgan

Securities Commissioner

State Securities Board

Filed: August 26, 2015

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 1 TAC §81.116(a)

The formula for estimating turnout for the 2014 primary elections is:

$$A \times (B + C) = D$$

Where:

A = the percentage of voter turnout for the office that received the most votes in the most recent comparable 2010 party primary election (percentage is the sum of all votes cast for the office that received the most votes in the most recent comparable party 2010 primary election divided by the number of registered voters).

B = the number of registered voters as of October preceding the primary 2013.

C = 25% of the number resulting when you multiply A x B.

D = Preliminary Estimated 2014 Turnout.

Figure: 1 TAC §81.123(h)

Administrative Costs		
Number of Registered Voters	Costs Allowed Thru March 31	Additional Month for Runoff
10,000 or less	\$300	\$75
10,001 - 25,000	\$1,500	\$375
25,001 - 50,000	\$3,000	\$750
50,001 - 140,000	\$12,000	\$3,000
140,001 - 325,000	\$24,000	\$6,000
325,001 - 500,000	\$40,000	\$10,000
Over 500,000	\$52,000	\$13,000

Figure: 1 TAC §81.152(a)

The formula for estimating turnout for the 2014 joint primary elections is:

$$(A \times B) + C + D = E$$

Where:

A = the percentage of voter turnout for the office that received the most votes in the most recent comparable 2010-party primary election (percentage is the sum of all votes cast for the office that received the most votes in the most recent comparable party 2010 primary election divided by the number of registered voters).

B = the number of registered voters as of October preceding the primary 2013.

C = 25% of the number resulting when you multiply A x B.

D = Other party's estimated turnout figure.

E = Preliminary Estimated 2014 Turnout for Joint-Primary Election.

Figure 1: 7 TAC Chapter 3--Preamble

<u>Fiscal Year</u>	<u>Additional Revenue</u>
2016	\$1,259,945
2017	\$2,519,890
2018	\$2,898,035
2019	\$3,283,710
2020	\$3,681,080
2021	\$4,086,360

Figure 2: 7 TAC Chapter 3--Preamble

<u>Cost per million dollars of bank assets</u>		
	<u>Small business</u>	<u>Large business</u>
Year 1:	\$22.82	\$8.52
Year 2:	\$23.20	\$8.66
Year 3:	\$23.59	\$8.81
Year 4:	\$23.98	\$8.95
Year 5:	\$24.38	\$9.10

Figure 3: 7 TAC Chapter 3--Preamble

<u>Cost per million dollars of bank assets</u>		
	<u>Bank under \$10 billion</u>	<u>Bank over \$10 billion</u>
Year 1:	\$16.04	\$6.60
Year 2:	\$16.31	\$6.71
Year 3:	\$16.58	\$6.82
Year 4:	\$16.86	\$6.93
Year 5:	\$17.14	\$7.05

Figure: 7 TAC §3.37(a)

First determine the bank's assessable asset group, then:

Steps	Assessment Calculation:	Assessable Asset Group:						
		1	2	3	4	5	6	7
1.	For assessable assets of at least (in thousands)	\$0	\$10,000	\$25,000	\$40,000	\$70,000	\$100,000	\$250,000
	But not greater than (in thousands):	\$10,000	\$25,000	\$40,000	\$70,000	\$100,000	\$250,000	\$1,000,000
2.	Take the total assessable assets over (in thousands):	\$0	\$10,000	\$25,000	\$40,000	\$70,000	\$100,000	\$250,000
3.	And multiply by the marginal assessment rate :	0.789600	0.448000	0.212800	0.208320	0.201600	0.123200	0.082880
4.	Add this result to the base assessment amount :	\$2,789	\$10,685	\$17,405	\$20,597	\$26,847	\$32,895	\$51,375
5.	Multiply the total by the factor corresponding to the bank's CAMELS composite rating (as defined in §3.36(b)):							
a.	Rating of 3, 4 or 5:	2.0	2.0	2.0	2.0	2.0	2.0	2.0
b.	Rating of 1 or 2:	1.0	1.0	1.0	1.0	1.0	1.0	1.0
6.	And multiply the total by 0.875 if bank has assessable assets of \$500 million or less and a CAMELS composite rating of 1 or 2.							
Steps	Assessment Calculation:	Assessable Asset Group:						
1.	For assessable assets of at least (in thousands):	\$1,000,000	\$5,000,000	\$10,000,000	\$20,000,000	\$40,000,000	\$60,000,000	\$80,000,000
	But not greater than (in thousands):	\$5,000,000	\$10,000,000	\$20,000,000	\$40,000,000	\$60,000,000	\$80,000,000	-----
2.	Take the total assessable assets over (in thousands):	\$1,000,000	\$5,000,000	\$10,000,000	\$20,000,000	\$40,000,000	\$60,000,000	\$80,000,000
3.	And multiply by the marginal assessment rate :	0.073920	0.067200	0.053933	0.032130	0.020655	0.013770	0.009180
4.	Add this result to the base assessment amount of:	\$113,535	\$409,215	\$745,215	\$1,284,545	\$1,927,145	\$2,340,245	\$2,615,645
5.	And multiply the total by the factor corresponding to the bank's CAMELS composite rating:							
a.	Composite rating of 3, 4, or 5:	2.0	2.0	2.0	2.0	2.0	2.0	2.0
b.	Composite rating of 1 or 2:	1.0	1.0	1.0	1.0	1.0	1.0	1.0

TEXAS MORTGAGE BANKER DISCLOSURE

Residential Mortgage Loan Originator: _____

NMLS ID: _____

Pursuant to the requirements of Section 157.0021 [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.

THE DEPARTMENT MAINTAINS A RECOVERY FUND TO MAKE PAYMENTS OF CERTAIN ACTUAL OUT OF POCKET DAMAGES SUSTAINED BY BORROWERS CAUSED BY ACTS OF LICENSED MORTGAGE BANKER 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 WEB SITE AT WWW.SML.TEXAS.GOV.

THIS DISCLOSURE WAS DELIVERED TO THE CONSUMER:

- IN PERSON
- BY FAX
- BY E-MAIL
- OTHER _____

DATE DELIVERY INITIATED: _____

Figure: 7 TAC §84.808(7)

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:				
Number of Payments	Amount of Payments	When Payments Are Due		

Security: You will have a security interest in the motor vehicle being purchased.
Late Charge: ~~[Sum of the periodic balances method:]~~ ~~[[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 late charge on the past due amount will 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 of ____% of the scheduled payment.
~~[Scheduled installment earnings or true daily earnings method:]~~ ~~[[Scheduled Installment Earnings 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 method:]]~~ If I pay all that I owe early, I will not have to pay a penalty. ~~[Sum of the periodic balances or scheduled installment earnings 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, any required repayment in full before the scheduled date, and prepayment refunds.

Figure: 7 TAC §84.808(8)(A)

ITEMIZATION OF AMOUNT FINANCED		
1.	Cash price [Optional additional description: "(including any accessories, services, and taxes)"]	\$ _____ (1)
2.	Downpayment = [If netting add: (if negative, enter "0" and see Line 4.A. below)]	
	Gross trade-in	\$ _____
	- payoff by Seller	\$ _____
	= net trade-in	\$ _____
	[If not netting add: (if negative enter "0" and see Line 4.A. below)]	
	+ cash	\$ _____
	+ Mfrs. Rebate	\$ _____
	+ other (describe) _____	\$ _____
	Total downpayment	\$ _____ (2)
3.	Unpaid balance of cash price (1 minus 2)	\$ _____ (3)
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"] to _____	\$ _____
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	\$ _____
	Life	
	Disability	
E.	Debt cancellation agreement fee paid to the Seller	\$ _____
F.	Official fees paid to government agencies	\$ _____
G.	Dealer's inventory tax [Optional addition: (if not included in cash price)]	\$ _____
H.	Sales tax [Optional addition: (if not included in cash price)]	\$ _____
I.	Other taxes [Optional addition: (if not included in cash price)]	\$ _____
J.	Government license and [and/or] registration fees	\$ _____
K.	Government certificate of title fee	\$ _____
L.	Government vehicle inspection fees	\$ _____
M.	Deputy 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. [Option to insert Spanish translation of disclosure here.]	\$ _____
O.	Other charges (Seller must identify who is paid and describe purpose)	
	to _____ for _____	\$ _____
	to _____ for _____	\$ _____
	to _____ for _____	\$ _____
	Total other charges and amounts paid to others on my behalf	\$ _____ (4)
5.	Amount Financed (3 + 4)	\$ _____ (5)
<p>[Optional caption: Seller will pay taxes, title fee, and license and registration fees to government agencies. Seller will retain the documentary fee and the deputy service fee. [Taxes, title fee, license fee, and any state inspection fee (except for \$7.00 of each such inspection fee that will be retained by Seller) will be paid by Seller to government agencies. Documentary fee and deputy service fee will be retained by Seller and the] Seller may also retain part or all of the inspection fee, insurance, service contracts, and other charges.]</p>		

[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."]

Figure: 7 TAC §84.808(8)(B)

ITEMIZATION OF AMOUNT FINANCED	
1. Cash price [Optional additional description: "(including any accessories, services, and taxes)"]	\$ _____ (1)
2. Downpayment (A + B) =	
A. [If netting add: (if negative, enter "0" and see Line 4.A. below)]	
Gross trade-in	\$ _____
- payoff by Seller	\$ _____
= net trade-in	\$ _____
B. [If not netting add: (if negative enter "0" and see Line 4.A. below)]	
+ cash	\$ _____
+ Mfrs. Rebate	\$ _____
+ other (describe) _____	\$ _____
Total downpayment	\$ _____ (2)
3. Unpaid balance of cash price (1 minus 2)	\$ _____ (3)
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"] to _____	\$ _____
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	\$ _____
Life	
Disability	
E. Debt cancellation agreement fee paid to the Seller	\$ _____
F. Official fees paid to government agencies	\$ _____
G. Dealer's inventory tax [Optional addition: (if not included in cash price)]	\$ _____
H. Other taxes [Optional addition: (if not included in cash price)]	\$ _____
I. Government license and [and/or] registration fees	\$ _____
J. Government certificate of title fee	\$ _____
K. Government vehicle inspection fees	\$ _____
L. Deputy service fee paid to dealer	\$ _____
M. 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. [Option to insert Spanish translation of disclosure here.]	\$ _____
N. Other charges (Seller must identify who is paid and describe purpose)	
to _____ for _____	\$ _____
to _____ for _____	\$ _____
to _____ for _____	\$ _____
Total Itemized Charges upon which the Finance Charge is assessed	\$ _____ (4)
5. Total Unpaid Balance Plus Itemized Charges Upon which the Finance Charge is assessed. (3+4)	\$ _____ (5)
6. Total Sales Tax (Upon Which No Finance Charge is Assessed)	\$ _____ (6)
7. Amount Financed (5+6)	\$ _____ (7)
Finance Charge (Not Assessed Upon Sales Tax)	\$ _____

[Optional caption: Seller will pay taxes, title fee, and license and registration fees to government agencies. Seller will retain the documentary fee and the deputy service fee. [Taxes, title fee, license fee, and any state inspection fee (except for \$7.00 of each such inspection fee that will be retained by Seller) will be paid by Seller to government agencies. Documentary fee and deputy service fee will be retained by Seller and the] Seller may also retain part or all of the inspection fee, insurance, service contracts, and other charges.]

[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."]

Figure: 7 TAC §84.808(11)

MODEL CLAUSE FOR PHYSICAL DAMAGE INSURANCE

PROPERTY INSURANCE: I must keep the collateral 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. The maximum deductible is \$ _____. 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.

Coverage	Term in Months	Premium
Collision	___	<input type="checkbox"/> \$ _____
Comprehensive	___	<input type="checkbox"/> \$ _____
Fire, Theft, and Combined Additional Coverage	___	<input type="checkbox"/> \$ _____
Other	___	<input type="checkbox"/> \$ _____

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: 7 TAC §84.808(12).]*

\$ _____ 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 insurance company authorized to do business in Texas.

I agree to purchase the above checked coverages.

Buyer's Signature: _____ Date: _____

Figure: 7 TAC §84.809(b)

MOTOR VEHICLE RETAIL INSTALLMENT SALES CONTRACT

(Optional: DATE _____)
 BUYER _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP _____
 PHONE _____

SELLER/CREDITOR _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP _____
 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 choose to purchase the motor vehicle on credit according to the terms of this contract. I agree to pay you the Amount Financed, Finance Charge, and any other charges in this contract. I agree to make payments according to the Payment Schedule in this contract. If more than one person signs as a buyer, I agree 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

Stock No.	Year	Make	Model	Vehicle Identification Number	License Number (if applicable)	<input type="checkbox"/> New <input type="checkbox"/> Demonstrator <input type="checkbox"/> Factory Official/Executive <input type="checkbox"/> Used	USE FOR WHICH PURCHASED
							<input type="checkbox"/> PERSONAL, FAMILY OR HOUSEHOLD <input type="checkbox"/> BUSINESS OR COMMERCIAL <input type="checkbox"/> AGRICULTURAL

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:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the motor vehicle being purchased.

Late Charge: ~~[Sum of the periodic balances method:]~~ ~~[[True daily earnings method:]]~~ (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 late charge on the past due amount will 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 of _____% of the scheduled payment.

~~[Scheduled installment earnings or true daily earnings method:]~~ ~~[[Scheduled Installment Earnings 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 method:]~~ If I pay all that I owe early, I will not have to pay a penalty. ~~[Sum of the periodic balances or scheduled installment earnings 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, any 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)"] \$ _____(1)

2. Downpayment =
 [If netting add: (if negative, enter "0" and see Line 4.A. below)]
 Gross trade-in \$ _____
 - payoff by Seller \$ _____
 = net trade-in \$ _____
 [If not netting add: (if negative enter "0" and see Line 4.A. below)]
 + cash \$ _____
 + Mfrs. Rebate \$ _____
 + other (describe) _____ \$ _____
 Total downpayment \$ _____(2)

3. Unpaid balance of cash price (1 minus 2) \$ _____(3)

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"] to \$ _____

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
 Life \$ _____
 Disability \$ _____

E. Debt cancellation agreement fee paid to the Seller \$ _____

F. Official fees paid to government agencies \$ _____

G. Dealer's inventory tax [Optional addition: (if not included in cash price)] \$ _____

H. Sales tax [Optional addition: (if not included in cash price)] \$ _____

I. Other taxes [Optional addition: (if not included in cash price)] \$ _____

J. Government license and [and/or] registration fees \$ _____

K. Government certificate of title fee \$ _____

L. Government vehicle inspection fees \$ _____

M. Deputy 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. [Option to insert Spanish translation of disclosure here.]** \$ _____

O. Other charges (Seller must identify who is paid and describe purpose)
 to _____ for \$ _____
 to _____ for \$ _____
 to _____ for \$ _____
 \$ _____

Total other charges and amounts paid to others on my behalf \$ _____(4)

5. **Amount Financed** (3 + 4) \$ _____(5)

[Optional caption: Seller will pay taxes, title fee, and license and registration fees to government agencies. Seller will retain the documentary fee and the deputy service fee. [Taxes, title fee, license fee, and any state inspection fee (except for \$7.00 of each such inspection fee that will be retained by Seller) will be paid by Seller to government agencies. Documentary fee and deputy service fee will be retained by Seller and the] Seller may also retain part or all of the inspection fee, insurance, service contracts, and other charges.]

[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."]

DEFERRED DOWNPAYMENT(S)	
AMOUNT	DATE DUE

MODEL CLAUSE FOR PHYSICAL DAMAGE INSURANCE

PROPERTY INSURANCE: I must keep the collateral 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. The maximum deductible is \$ _____. 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.

Coverage	Term in Months	Premium
Collision	_____	<input type="checkbox"/> \$ _____
Comprehensive	_____	<input type="checkbox"/> \$ _____
Fire, Theft, and Combined Additional Coverage	_____	<input type="checkbox"/> \$ _____
Other	_____	<input type="checkbox"/> \$ _____

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: 7 TAC §84.808(12).]

- \$ _____ 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 insurance 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 buy 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.]

Coverage	Term in Months	Premium or Fee
GAP*	_____	<input type="checkbox"/> \$ _____
Invol. Unemployment	_____	<input type="checkbox"/> \$ _____
Debt cancellation agreement**	_____	\$ _____
Liability Insurance	_____	<input type="checkbox"/> \$ _____
	\$ _____ 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.]

MODEL CLAUSE FOR OPTIONAL CREDIT LIFE AND ACCIDENT AND HEALTH (DISABILITY) INSURANCE

Optional credit life and credit disability insurance. Credit life insurance and credit disability insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost. [At creditor's option, the following may be added:] My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

Credit Life, one buyer \$ _____ Credit Life, both buyers \$ _____ Term _____
 Credit Disability, one buyer \$ _____ Credit Disability, both buyers \$ _____ Term _____

[Optional additional sentence for balloon payment contracts:] Credit Life Insurance is for the scheduled term of this contract. Credit Disability Insurance covers the first ____ payments and does not cover the last scheduled payment. [Optional additional language for true daily earnings method contracts:] Credit life insurance pays only the amount I would owe if I paid all my payments on time. Credit disability insurance does not cover any increase in my payment or in the number of payments.

If the term of the insurance is 121 months or longer, the premium is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance indicated above.

Buyer's Signature: _____ Date: _____
Co-Buyer's Signature: _____ Date: _____

[Note: A creditor who does not routinely finance these 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.]

LIABILITY INSURANCE

(OPTION A) THIS CONTRACT DOES NOT INCLUDE INSURANCE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS.

(OPTION B) UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS CONTRACT.

(OPTION C) UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, ANY INSURANCE REFERRED TO IN THIS CONTRACT DOES NOT INCLUDE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS.

Any change to this contract must be in writing. Both you and I must sign it. No oral changes to this contract are enforceable.

_____ Buyer _____ Co-Buyer

HOW YOU FIGURE THE FINANCE CHARGE

[Regular transaction using sum of the periodic balances method:] (Option A₁: Sales Tax Advance) You figure the Finance Charge using the add-on method as defined by the Texas Finance Commission Rule. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. (Option A₂: Sales Tax Advance) The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. The add-on Finance Charge is calculated at a rate of \$ _____ per \$100.00 per year. This rate is not the same as the Annual Percentage Rate. (Option B: Deferred Sales Tax) The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance subject to a finance charge and added as a lump sum to the unpaid principal balance subject to a Finance Charge for the full term of the contract. The add-on finance charge is calculated at a rate of \$ _____ per \$100.00 per year. This rate is not the same as the Annual Percentage Rate.

[True daily earnings method:] (Option A₁: Sales Tax Advance) You figure the Finance Charge using the true daily earnings method as defined by the Texas Finance Code. Under the true daily earnings method, the Finance Charge will be figured by applying the daily rate to the unpaid portion of the Amount Financed for the number of days the unpaid portion of the Amount Financed is outstanding. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges. (Option A₂: Sales Tax Advance) The contract rate is ____%. 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. The daily rate is 1/365th of the contract rate. The unpaid principal balance does not include the late charges or returned check charges. (Option B: Deferred Sales Tax) The contract rate is ____%. 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.

[Scheduled installment earnings method:] (Option A₁: Sales Tax Advance) 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 Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges. (Option A₂: Sales Tax Advance) The contract rate is ____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure 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. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance does not include the late charges or returned check charges. (Option B: Deferred Sales Tax) The contract rate is ____%. This contract rate may not be the same as the Annual 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.

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 based 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 early, my Finance Charge will be reduced (less). If I make my scheduled payments late, my Finance Charge will increase.

INTEREST AFTER MATURITY [Scheduled installment earnings or sum of the periodic balances method:] 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)(iii)) 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. The insurer must be authorized to do business in Texas. (Optional Provisions: [Language Provision:] The insurance must include collision coverage and either comprehensive or fire, theft, and combined additional coverage. The maximum deductible is \$ _____.)

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 of equity fee of \$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 pay the third party any cost required to free 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. If you sell the motor vehicle in a public or private sale, you [~~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 record transfer of 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 AND SERVICE CONTRACTS This contract may contain charges for insurance or 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 you all that I owe, you will give me a credit of part of the Finance Charge as if I had prepaid in full.

RETURNED CHECK FEE I agree to pay you a fee of up to \$30 for a returned check. You can add the fee to the amount I owe or collect it separately.

INTEGRATION AND SEVERABILITY CLAUSE This contract contains the entire agreement between you and me relating to the sale and financing of the motor vehicle. 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 over 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 of 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.

In this box only, the word "you" refers to the Buyer.

Used Car Buyers Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

Spanish Translation:

Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

Figure: 7 TAC §90.203(b)(7)(A)

"Interest will be calculated by using the add-on interest method. Add-on interest is calculated on the full amount of the cash advance and added as a lump sum to the cash advance for the full term of the loan. The interest charge will be:

- \$18.00 per \$100.00 per year on that portion of the cash advance that is \$2,010 [~~\$1,500.00~~] or less; and
- \$8.00 per \$100.00 per year on that portion of the cash advance that is greater than \$2,010 [~~\$1,500.00~~] through \$16,750 [~~\$12,500.00~~].

You base the Finance Charge and the Total of Payments as if I will make each payment on the day it is due. I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. The amount I save will be figured using the scheduled installment earnings method as defined by the Texas Finance Code. I will not get a refund if the amount I save would be less than \$1.00."

Figure: 7 TAC §90.203(b)(7)(C)

"The annual rate of interest is: (1) 30% on the unpaid cash advance that is \$3,350.00 [~~\$2,500.00~~] or less; (2) 24% on the unpaid cash advance that is greater than \$3,350.00 [~~\$2,500.00~~] through \$7,035.00 [~~\$5,250.00~~]; and (3) 18% on the unpaid cash advance that is greater than \$7,035.00 [~~\$5,250.00~~] through \$16,750.00 [~~\$12,500.00~~]. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not get a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment."

Figure: 7 TAC §90.203(b)(7)(E)

"The annual rate of interest is: (1) 30% on the unpaid cash advance that is \$3,350.00 [~~\$2,500.00~~] or less; (2) 24% on the unpaid cash advance that is greater than \$3,350.00 [~~\$2,500.00~~] through \$7,035.00 [~~\$5,250.00~~]; and (3) 18% on the unpaid cash advance that is greater than \$7,035.00 [~~\$5,250.00~~] through \$16,750.00 [~~\$12,500.00~~]. This interest rate may not be the same as the Annual Percentage Rate. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment."

Figure: 7 TAC §90.204(a)(7)

CONSUMER CREDIT DISCLOSURE - PROMISSORY NOTE

ACCOUNT / CONTRACT NO. _____
 CREDITOR / LENDER _____
 ADDRESS _____

DATE OF NOTE _____
 BORROWER _____
 ADDRESS _____

"I" and "me" and similar words mean each person who signs as a Borrower. "You" and "your" and similar words mean the Lender.

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. \$ _____
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My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the following described collateral _____.
 If checked, Borrower is giving a security interest in:
 Motor Vehicle Property Purchased with the Money from this Loan Personal Property Other
 Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.
 Prepayment: If I pay off early, I may be entitled to a refund of part of the Finance Charge and I will not have to pay a penalty.
 Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

I promise to pay the Total of Payments to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule. If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment. If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. [Finance Charge Earnings and Refund Method clause]

If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules. I agree to pay you a fee of up to \$30 for a returned check. You can add the fee to the amount I owe or collect it separately.

OPTION A

ITEMIZATION OF AMOUNT FINANCED

1. Amount Financed: (2+3+4)	\$ _____
2. Amount given to me directly	\$ _____
3. Amount paid on my account (Net Balance - Prior Account)	\$ _____
4. Amount paid to others on my behalf (A + B + C +D + E + F) (You may be retaining a portion of this amount.)	\$ _____
A. Cost of personal property insurance paid to insurance company	\$ _____
B. Cost of single-interest insurance paid to insurance company	\$ _____
C. Cost of optional credit insurance paid to insurance company or companies	
Life	\$ _____
Disability	\$ _____
Involuntary Unemployment Insurance	\$ _____
Total C:	\$ _____
D. Non-Filing Insurance paid to insurance company	\$ _____
E. Official fees paid to government agencies	\$ _____
F. Payable to: _____	\$ _____
Payable to: _____	\$ _____
Payable to: _____	\$ _____
Total F:	\$ _____
5. Prepaid Finance Charge (Administrative Fee)	\$ _____

I will be in default if:
 I do not timely make a payment;
 I break any promise I made in this agreement;
 I allow a judgment to be entered against me or the collateral;
 I sell, lease, or dispose of the collateral;
 I use the collateral for an illegal purpose; or
 you believe in good faith that I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan documents.

PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. 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. If I buy personal property insurance through you, the rate is not fixed or approved by the Texas Department of Insurance.

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. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. If you obtain collateral protection insurance, you will mail notice to my last known address.

Personal Property Insurance \$ _____ Term _____

Single Interest Insurance (Vehicle) \$ _____ Term _____

Credit insurance is optional.

Credit life insurance, credit disability insurance and involuntary unemployment insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost.

Credit Life, one borrower \$ _____ Credit Life, both borrowers \$ _____ Term _____

Credit Disability, one borrower \$ _____ Credit Disability, both borrowers \$ _____ Term _____

Credit Involuntary Unemployment Insurance, one borrower \$ _____ Term _____

If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance above.

Borrower's signature: _____ Date: _____

Co-Borrower's signature: _____ Date: _____

I agree:

1. You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it.
2. I promise that all information I gave you is true.
3. If I am in default, you may require me to repay the entire unpaid principal balance, and any accrued interest at once. 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 don't enforce your rights every time, you can still enforce them later. If this debt is referred to an attorney for collection, I will pay any attorney fees set by the court plus court costs.
4. I understand that you may seek payment from only me without first looking to any other Borrower.
5. I don't have to pay interest or other amounts that are more than the law allows.
6. If any part of this contract is declared invalid, the rest of the contract remains valid.
7. **This written loan agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this loan agreement. Any change to this agreement must be in writing. Both you and I have to sign written agreements.**
8. If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements.
9. Federal law and Texas law apply to this contract.

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov. [This lender is licensed and examined by the State of Texas Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, www.occc.state.tx.us, (800) 538-1579.]

I agree to the terms of this contract. I received a completed copy on _____.

X _____
Borrower
X _____
Borrower

Recibi un resumen del contrato en español. _____
I received a summary of the contract in Spanish.
[Recibi la Forma Informe de Prestamo _____]
[I received the Spanish Disclosure.]

Figure: 7 TAC §90.204(a)(8)

CONSUMER CREDIT DISCLOSURE - PROMISSORY NOTE

ACCOUNT / CONTRACT NO. _____
 CREDITOR / LENDER _____
 ADDRESS _____

DATE OF NOTE _____
 BORROWER _____
 ADDRESS _____

"I" and "me" and similar words mean each person who signs as a Borrower. "You" and "your" and similar words mean the Lender.

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.
%	\$	\$	\$

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the following described collateral _____.

If checked, Borrower is giving a security interest in:

Motor Vehicle Property Purchased with the Money from this Loan Personal Property Other

Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.

Prepayment: If I pay off early, I will not have to pay a penalty.

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

I promise to pay the cash advance plus the accrued interest to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule. If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment. ~~[If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.]~~

I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. [Finance Charge Earnings and Refund Method clause]

If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules. I agree to pay you a fee of up to \$30 for a returned check. You can add the fee to the amount I owe or collect it separately.

I will be in default if:

- I do not timely make a payment;
- I break any promise I made in this agreement;
- I allow a judgment to be entered against me or the collateral;
- I sell, lease, or dispose of the collateral;
- I use the collateral for an illegal purpose; or
- you believe in good faith that I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan documents.

OPTION A

ITEMIZATION OF AMOUNT FINANCED

1. **Amount Financed: (2+3+4)** \$ _____
2. **Amount given to me directly** \$ _____
3. **Amount paid on my account (Net Balance - Prior Account)** \$ _____
4. **Amount paid to others on my behalf (A + B + C +D + E + F)** \$ _____
(You may be retaining a portion of this amount.)
 - A. **Cost of personal property insurance paid to insurance company** \$ _____
 - B. **Cost of single-interest insurance paid to insurance company** \$ _____
 - C. **Cost of optional credit insurance paid to insurance company or companies**
 - Life \$ _____
 - Disability \$ _____
 - Involuntary Unemployment Insurance \$ _____
 - Total C:** \$ _____
 - D. **Non-Filing Insurance paid to insurance company** \$ _____
 - E. **Official fees paid to government agencies** \$ _____
 - F. **Payable to:** _____ \$ _____
 - Payable to:** _____ \$ _____
 - Payable to:** _____ \$ _____
 - Total F:** \$ _____
5. **Prepaid Finance Charge (Administrative Fee)** \$ _____

PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. 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. If I buy personal property insurance through you, the rate is not fixed or approved by the Texas Department of Insurance.

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. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. If you obtain collateral protection insurance, you will mail notice to my last known address.

Personal Property Insurance \$ _____ Term _____
 Single Interest Insurance (Vehicle) \$ _____ Term _____

Credit insurance is optional.

Credit life insurance, credit disability insurance and involuntary unemployment insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost.

Credit Life, one borrower \$ _____ Credit Life, both borrowers \$ _____ Term _____
 Credit Disability, one borrower \$ _____ Credit Disability, both borrowers \$ _____ Term _____
 Credit Invduntary Unemployment Insurance, one borrower \$ _____ Term _____

If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance above.

Borrower's signature: _____ Date: _____

Co-Borrower's signature: _____ Date: _____

I agree:

1. You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it.
2. I promise that all information I gave you is true.
3. If I am in default, you may require me to repay the entire unpaid principal balance, and any accrued interest at once. 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 don't enforce your rights every time, you can still enforce them later. If this debt is referred to an attorney for collection, I will pay any attorney fees set by the court plus court costs.
4. I understand that you may seek payment from only me without first looking to any other Borrower.
5. I don't have to pay interest or other amounts that are more than the law allows.
6. If any part of this contract is declared invalid, the rest of the contract remains valid.
7. **This written loan agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this loan agreement. Any change to this agreement must be in writing. Both you and I have to sign written agreements.**
8. If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements.
9. Federal law and Texas law apply to this contract.

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer_complaints@occc.texas.gov. [This lender is licensed and examined by the State of Texas - Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, www.occc.state.tx.us, (800) 538-1579.]

I agree to the terms of this contract. I received a completed copy on _____.

X _____
Borrower
X _____
Borrower

Recibi un resumen del contrato en español. _____
I received a summary of the contract in Spanish.
[Recibi la Forma Informe de Prestamo _____]
[I received the Spanish Disclosure.]

Figure: 7 TAC §90.304(a)(7)

CONSUMER CREDIT DISCLOSURE – PROMISSORY NOTE

ACCOUNT / CONTRACT NO. _____
 CREDITOR / LENDER _____
 ADDRESS _____

DATE OF NOTE _____
 BORROWER _____
 ADDRESS _____

"I" and "me" means each person who signs as a Borrower. "You" means the Lender.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. <div style="text-align: right;">%</div>	FINANCE CHARGE The dollar amount the credit will cost me. <div style="text-align: right;">\$</div>	Amount Financed The amount of credit provided to me or on my behalf. <div style="text-align: right;">\$</div>	Total of Payments The amount I will have paid after I have made all payments as scheduled. <div style="text-align: right;">\$</div>
My Payment Schedule will be:			
Number of Payments	Amount of Payments	When Payments Are Due	

Security: You will have a security interest in the following described collateral _____.

Late Charge: If any part of a payment is unpaid for 10 days after it is due, (Option 1:) the late charge will be 5% of the scheduled payment. OR (Option 2:) you can charge me a late charge. If the amount financed is less than \$100, the late charge will be 5% of the amount of the installment. If the amount financed is \$100 or more, the late charge will be the greater of \$10 or 5% of the amount of the installment.

Prepayment: If I pay off early, I may be entitled to a refund of part of the finance charge.

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

ITEMIZATION OF THE FINANCE CHARGE	
Acquisition Charge.....	\$ _____
Installment Account Handling Charge.....	\$ _____

ITEMIZATION OF THE AMOUNT FINANCED	
Previous Account.....	# _____
Late Charge on Previous Account.....	\$ _____
Previous Balance.....	\$ _____
Less Refund.....	\$ _____
Net Balance Renewed.....	\$ _____
Cash to me.....	\$ _____
Amount Financed.....	\$ _____

I promise to pay the Total of Payments to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule. If I don't pay all of the payment within 10 days after it is due, you can charge me a late charge. (Option 1:) The late charge will be 5% of the scheduled payment. OR (Option 2:) If the amount financed is less than \$100, the late charge will be 5% of the amount of the installment. If the amount financed is \$100 or more, the late charge will be the greater of \$10 or 5% of the amount of the installment. If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be at a rate of 18% per year and will begin the day after the final payment becomes due.

I can make a whole payment early. The acquisition charge on this loan will not be refunded if I pay off early. If I pay all I owe before the beginning of the last monthly period, I will save part of the installment account handling charge. You will figure the amount I save by the sum of the periodic balances method. This method is explained in the Finance Commission rules. You don't have to refund or credit any amount less than \$1.00.

If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules. I agree to pay you a fee of up to \$30 for a returned check. You can add the fee to the amount I owe or collect it separately.

If I break any of my promises in this document, you can demand that I immediately pay all that I owe. You can also do this if you in good faith believe that I am not going to be willing or able to keep all of my promises. I agree that you don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe.

If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements.

I will keep all of my promises in this document. If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan document. I promise that all information I gave you is true.

If you don't enforce your rights every time, you can still enforce them later. Federal law and Texas law apply to this contract. I don't have to pay interest or other amounts that are more than the law allows.

Any change to this agreement has to be in writing. Both you and I have to sign it. You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it.

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov. [This lender is licensed and examined by the State of Texas Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, www.occc.state.tx.us, (800) 538-1579.]

X _____
Borrower

X _____
Co-Borrower

Recibí un resumen del contrato en español. _____
I received a summary of the contract in Spanish.

[Reciba la Forma Informa de Prestamo _____]
[I received the Spanish Disclosure.]

Figure: 7 TAC §90.304(a)(8)

CONSUMER CREDIT DISCLOSURE – PROMISSORY NOTE

ACCOUNT / CONTRACT NO. _____
 CREDITOR / LENDER _____
 ADDRESS _____

DATE OF NOTE _____
 BORROWER _____
 ADDRESS _____

"I" and "me" means each person who signs as a Borrower. "You" means the Lender.

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. \$
My Payment Schedule will be:			
Number of Payments	Amount of Payments	When Payments Are Due	

Security: You will have a security interest in the following described collateral _____.
Late Charge: If any part of a payment is unpaid for 10 days after it is due, (Option 1:) the late charge will be 5% of the scheduled payment. OR (Option 2:) you can charge me a late charge. If the amount financed is less than \$100, the late charge will be 5% of the amount of the installment. If the amount financed is \$100 or more, the late charge will be the greater of \$10 or 5% of the amount of the installment.
Prepayment: If I pay off early, I may be entitled to a refund of part of the finance charge and I will not have to pay a penalty.
Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

ITEMIZATION OF THE FINANCE CHARGE	
Acquisition Charge.....	\$ _____
Interest Charge (Installment Account Handling Charge)...	\$ _____

ITEMIZATION OF THE AMOUNT FINANCED	
Previous Account.....	# _____
Late Charge on Previous Account.....	\$ _____
Previous Balance.....	\$ _____
Less Refund.....	\$ _____
Net Balance Renewed.....	\$ _____
Cash to me.....	\$ _____
Amount Financed.....	\$ _____

I promise to pay the Total of Payments to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule. I can make a whole payment early.

The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the interest charge (also called the installment account handling charge) by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid principal balance. At the start of the loan, the unpaid principal balance equals the Amount Financed. The unpaid principal balance does not include the acquisition charge, the interest charge, late charges, charges to extend a payment, or returned check fees. You calculate the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply each of my payments in this order: (1) part of the acquisition charge (figured on a straight-line basis under Finance Commission rules), (2) late charges, (3) returned check fees, (4) accrued interest, and (5) the unpaid principal balance. If I pay off the loan in full early, I may save part of the interest charge. However, you can still collect the unpaid acquisition charge, and the acquisition charge will not be refunded. You don't have to refund or credit any amount less than \$1.00.

If I don't pay all of the payment within 10 days after it is due, you can charge me a late charge. (Option 1:) The late charge will be 5% of the scheduled payment. OR (Option 2:) If the amount financed is less than \$100, the late charge will be 5% of the amount of the installment. If the amount financed is \$100 or more, the late charge will be the greater of \$10 or 5% of the amount of the installment. If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be at a rate of 18% per year and will begin the day after the final payment becomes due. I agree to pay you a fee of up to \$30 for a returned check. You can add the fee to the amount I owe or collect it separately.

If I break any of my promises in this document, you can demand that I immediately pay all that I owe. You can also do this if you in good faith believe that I am not going to be willing or able to keep all of my promises. I agree that you don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe.

If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements.

I will keep all of my promises in this document. If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan document. I promise that all information I gave you is true.

If you don't enforce your rights every time, you can still enforce them later. Federal law and Texas law apply to this contract. I don't have to pay interest or other amounts that are more than the law allows.

Any change to this agreement has to be in writing. Both you and I have to sign it. You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it.

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov.

X _____
Borrower

X _____
Co-Borrower

Recibi un resumen del contrato en español. _____
I received a summary of the contract in Spanish.

Figure: 7 TAC §90.304(a)(9)

CONSUMER CREDIT DISCLOSURE – PROMISSORY NOTE

ACCOUNT / CONTRACT NO. _____
 CREDITOR / LENDER _____
 ADDRESS _____

DATE OF NOTE _____
 BORROWER _____
 ADDRESS _____

"I" and "me" means each person who signs as a Borrower. "You" means the Lender.

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. \$
My Payment Schedule will be:			
Number of Payments	Amount of Payments	When Payments Are Due	

Security: You will have a security interest in the following described collateral _____
 Late Charge: If any part of a payment is unpaid for 10 days after it is due, (Option 1:) the late charge will be 5% of the scheduled payment. OR (Option 2:) you can charge me a late charge. If the amount financed is less than \$100, the late charge will be 5% of the amount of the installment. If the amount financed is \$100 or more, the late charge will be the greater of \$10 or 5% of the amount of the installment.
 Prepayment: If I pay off early, I will not have to pay a penalty.
 Additional Information: See the contract documents for any additional information about nonpayment, default, and any required repayment in full before the scheduled date.

ITEMIZATION OF THE FINANCE CHARGE	
Acquisition Charge.....	\$ _____
Interest Charge (Installment Account Handling Charge)...	\$ _____

ITEMIZATION OF THE AMOUNT FINANCED	
Previous Account.....	# _____
Late Charge on Previous Account.....	\$ _____
Previous Balance.....	\$ _____
Less Refund.....	\$ _____
Net Balance Renewed.....	\$ _____
Cash to me.....	\$ _____
Amount Financed.....	\$ _____

I promise to pay the unpaid principal balance plus the accrued interest to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule. I can make any payment early.

The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the interest charge (also called the installment account handling charge) by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid principal balance. At the start of the loan, the unpaid principal balance equals the Amount Financed. The unpaid principal balance does not include the acquisition charge, the interest charge, late charges, charges to extend a payment, or returned check fees. You calculate the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. You will apply each of my payments in this order: (1) part of the acquisition charge (figured on a straight-line basis under Finance Commission rules), (2) late charges, (3) returned check fees, (4) accrued interest, and (5) the unpaid principal balance. If I pay off the loan in full early, you can still collect the unpaid acquisition charge, and the acquisition charge will not be refunded.

If I don't pay all of the payment within 10 days after it is due, you can charge me a late charge. (Option 1:) The late charge will be 5% of the scheduled payment. OR (Option 2:) If the amount financed is less than \$100, the late charge will be 5% of the amount of the installment. If the amount financed is \$100 or more, the late charge will be the greater of \$10 or 5% of the amount of the installment. I agree to pay you a fee of up to \$30 for a returned check. You can add the fee to the amount I owe or collect it separately.

If I break any of my promises in this document, you can demand that I immediately pay all that I owe. You can also do this if you in good faith believe that I am not going to be willing or able to keep all of my promises. I agree that you don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe.

If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements.

I will keep all of my promises in this document. If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan document. I promise that all information I gave you is true.

If you don't enforce your rights every time, you can still enforce them later. Federal law and Texas law apply to this contract. I don't have to pay interest or other amounts that are more than the law allows.

Any change to this agreement has to be in writing. Both you and I have to sign it. You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it.

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov.

X _____
Borrower
X _____
Co-Borrower

Recibí un resumen del contrato en español. _____
I received a summary of the contract in Spanish.

Figure: 7 TAC §90.304(a)(10) [~~§90.304(a)(8)~~]

SECURITY AGREEMENT

ACCOUNT / CONTRACT NO. _____

DATE OF NOTE _____

CREDITOR / LENDER _____

BORROWER _____

ADDRESS _____

ADDRESS _____

"I" and "me" means each person who signs as a Borrower. "You" means the Lender/Secured Party.

We are entering into this security agreement at the same time that we are entering into a loan.

In exchange for the loan referenced above, I agree to the following terms and conditions:

1. To secure this loan, I give you a security interest in the collateral. The collateral includes the property listed below, anything that becomes attached to it, and all proceeds of the collateral. This security interest also secures all other debt I owe you now. I understand that all collateral that I have given to secure loans may also be used to secure this and any other loans you may make to me.
2. I own the collateral. I won't sell or transfer it without your written permission. I won't allow anyone else to have an interest in the collateral except you.
3. I will keep the collateral at my address shown above. I will promptly tell you in writing if I change my address. I won't permanently remove the collateral from Texas unless you give me written permission.
4. I will timely pay all taxes and license fees on the collateral. I will keep it in good repair. I won't use the collateral illegally.
5. Any change to this security agreement has to be in writing. Both you and I have to sign it.
6. Any default under my agreements with you will be a default of this security agreement.
7. Federal law and Texas law apply to this security agreement.
8. If I don't keep any of my promises, you can take the collateral. You will only take the collateral lawfully and without a breach of the peace. If you take my collateral, you will tell me how much I have to pay to get it back. If I don't pay you to get the collateral 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. My right to get the collateral back ends when you sell it. You can use the money you get from selling it to pay amounts the law allows, and to reduce the amount I owe. If any money is left, you will pay it to me. 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.

DESCRIBE THE COLLATERAL COVERED BY THIS SECURITY AGREEMENT:

Borrower acknowledges receipt of a signed copy of this Security Agreement, signed this ____ day of _____, 20__.

Accepted by Secured Party:

X _____
Borrower

By: _____

X _____
Co-Borrower

Name & Title: _____

Figure: 7 TAC §90.403(b)(2)(C)

My Payment Schedule will be:

<u>Number of Payments</u>	<u>Amount of Payments</u>	<u>When Payments Are Due</u>

Figure: 7 TAC §90.403(b)(6)(A) [~~§90.403(b)(8)(A)~~]

"The annual rate of interest is ____%. This interest rate may be different from the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I will not have to pay a penalty, and I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe."

Figure: 7 TAC §90.403(b)(6)(B) [~~§90.403(b)(8)(B)~~]

"The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe."

Figure: 7 TAC §90.403(b)(6)(C) [~~§90.403(b)(8)(C)~~]

"The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment. I may prepay my loan in full early without paying a penalty.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any charges I owe other than principal and interest."

Figure: 7 TAC §90.403(b)(8) [~~§90.403(b)(10)~~]

"I will be in default if:

- a. I do not timely make a payment to the person or place you direct;
- b. I break any promise I made in the Loan Agreement;
- c. I allow a lien to be entered against the homestead unless you agree in writing;
- d. I sell, lease, or dispose of the homestead;
- e. I use the homestead for an illegal purpose; or
- f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the Loan Agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default. You may not demand that I pay the loan in full solely because the market value of the homestead decreases or because I default under any indebtedness not secured by the homestead."

Figure: 7 TAC §90.403(b)(9) [~~§90.403(b)(11)~~]

PROPERTY INSURANCE: I must keep my homestead insured against damage or loss in at least the amount I owe. 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.

If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.

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. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. You will insure the homestead for the lesser amount of the value of the property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

Credit property insurance is not required to obtain credit.

Property Insurance \$ _____ Term _____

Figure: 7 TAC §90.403(b)(10) [~~§90.403(b)(12)~~]

"Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

Credit Life, one borrower \$ _____ Credit Life, both borrowers \$ _____ Term _____
 Credit Disability, one borrower \$ _____ Credit Disability, both borrowers \$ _____ Term _____

If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

 Borrower's Signature Date

Premium Due with the First Month's <u>Loan Payment</u>	First Year <u>Premium</u>	Insurance <u>Type:</u>
\$ _____	\$ _____	
\$ _____	\$ _____	
\$ _____	\$ _____	

 Co-Borrower's Signature Date

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

- (1) your receipt of my written request for cancellation;
- (2) cancellation under the insurance certificate or policy;
- (3) payment in full of my loan; or
- (4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium.

Figure: 7 TAC §90.403(b)(23) [~~§90.403(b)(25)~~]

"Do not sign if there are blanks left to be completed in this document. This document must be signed at the office of the Lender, an attorney at law, or a title company.

I must receive a copy of this document after I have signed it. I agree to the terms of this Loan Agreement.

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

(Sign Original Only)

(Option for witness signatures)"

TEXAS HOME EQUITY NOTE (Fixed Rate – Second Lien)

**THIS IS AN EXTENSION OF CREDIT AS DEFINED BY SECTION 50(a)(6),
ARTICLE XVI OF THE TEXAS CONSTITUTION.**

CREDITOR/LENDER _____
 CREDITOR/LENDER NMLS ID _____
 LOAN ORIGINATOR _____
 LOAN ORIGINATOR NMLS ID _____
 ADDRESS _____

DATE OF NOTE _____
 ACCOUNT/CONTRACT NO. _____
 BORROWER _____
 ADDRESS _____

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

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. \$ _____
My Payment Schedule will be:			
Number of Payments	Amount of Payments	When Payments Are Due	

Security: You will have a security interest in my homestead.
Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.
Prepayment:(Scheduled Installment Earnings Method): If I pay off early, I may be entitled to a refund of part of the Finance Charge. I will not have to pay a penalty. (**True Daily Earnings Method**): If I pay off early, I will not have to pay a penalty.
Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

1. BORROWER'S PROMISE TO PAY

This loan is an Extension of Credit defined by Section 50(a)(6), Article XVI of the Texas Constitution. Scheduled Installment Earnings Method: I promise to pay the Total of Payments to the order of you. The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule. True Daily Earnings Method: I promise to pay the cash advance plus the accrued interest to the order of you. The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

2. LATE CHARGE

General Late Charge: If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment. High-Cost Mortgage Loan Late Charge: If I don't pay all of a payment within 15 days after it is due, you can charge me a late charge. The late charge will be 4% of the amount of the payment past due.

3. AFTER MATURITY INTEREST

If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

4. PREPAYMENT

Scheduled Installment Earnings Method: I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. True Daily Earnings Method: I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

5. FINANCE CHARGE AND REFUND METHOD

For contracts using Scheduled Installment Earnings Method - Section 342.301 rate loans: The annual rate of interest is ____%. This interest rate may be different from the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I will not have to pay a penalty, and I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using Scheduled Installment Earnings Method with prepayments option - Section 342.301 rate loans: The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using True Daily Earnings Method - Section 342.301 rate loans: The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment. I may prepay my loan in full early without paying a penalty.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any charges I owe other than principal and interest.

6. FEE FOR DISHONORED CHECK

I agree to pay you a fee of up to \$30 for a returned check. You may add the fee to the amount I owe or collect it separately.

7. DEFAULT

I will be in default if:

- a. I do not timely make a payment to the person or place you direct;
- b. I break any promise I made in the Loan Agreement;
- c. I allow a lien to be entered against the homestead unless you agree in writing;
- d. I sell, lease, or dispose of the homestead;
- e. I use the homestead for an illegal purpose; or
- f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the Loan Agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default. You may not demand that I pay the loan in full solely because the market value of the homestead decreases or because I default under any indebtedness not secured by the homestead.

8. PROPERTY INSURANCE

PROPERTY INSURANCE: I must keep my homestead insured against damage or loss in at least the amount I owe. 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.

If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.

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. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. You will insure the homestead for the lesser amount of the value of the property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

Credit property insurance is not required to obtain credit.

Property Insurance \$ _____ Term _____

9. CREDIT INSURANCE

Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium
 Credit Life, one borrower \$ _____ Credit Life, both borrowers \$ _____ Term _____
 Credit Disability, one borrower \$ _____ Credit Disability, both borrowers \$ _____ Term _____

If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance above.

Borrower's Signature: _____ Date: _____
 Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

Borrower's Signature Date

Premium Due with	First Year	Insurance
the First Month's	Premium	Type:
<u>Loan Payment</u>		
\$	\$	
\$	\$	
\$	\$	

Co-Borrower's Signature Date

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

- (1) your receipt of my written request for cancellation;
- (2) cancellation under the insurance certificate or policy;
- (3) payment in full of my loan; or
- (4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium.

10. MAILING OF NOTICES TO BORROWER

You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it by first class mail.

11. DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the homestead is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law.

If you exercise this option, you will give me notice of acceleration (i.e., payment of all I owe at once). This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement.

12. NO WAIVER OF LENDER'S RIGHTS

If you don't enforce your rights every time, you can still enforce them later.

13. COLLECTION EXPENSES

If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by law, including Section 50(a)(6), Article XVI of the Texas Constitution. These expenses include, for example, reasonable attorneys' fees. I understand that these fees are not for maintaining or servicing this Loan Agreement.

14. JOINT LIABILITY

I understand that you may seek payment from only me without first looking to any other Borrower. You can enforce your rights under this Loan Agreement solely against the homestead. This Loan Agreement is made without personal liability against each owner of the homestead and the spouse of each owner unless the owner or spouse obtained this loan by actual fraud.

If this loan is obtained by actual fraud, I will be personally liable for the debt, including a judgment for any deficiency that results from your sale of the homestead for an amount less than is owed under this Loan Agreement.

15. USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than the law allows.

16. SAVINGS CLAUSE

If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with any law will be modified to comply with the law. The rest of the Loan Agreement remains valid.

17. PRIOR AGREEMENTS

This written Loan Agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this Loan Agreement. Any change to this Loan Agreement must be in writing. Both you and I have to sign written agreements.

18. HOMESTEAD IS SUBJECT TO THE LIEN OF THE SECURITY DOCUMENT

The homestead described above by the property address is subject to the lien of the Security Document. I will see the separate Security Document for more information about my rights and responsibilities.

19. APPLICATION OF LAW

Federal law and Texas law apply to this Loan Agreement. The Texas Constitution will be applied to resolve any conflict between the Texas Constitution and any other law.

20. OCCC [COMPLAINTS AND INQUIRIES] NOTICE

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov.

~~[This lender is licensed and examined by the State of Texas — Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems.]~~

[Office of Consumer Credit Commissioner]
[2601 North Lamar Boulevard, Austin, Texas 78705-4207]
[www.occc.state.tx.us]
[(800) 538-1579]

21. COLLATERAL

The homestead described above by the property address is subject to the lien of the Security Document.

Do not sign if there are blanks left to be completed in this document. This document must be signed at the office of the Lender, an attorney at law, or a title company.

I must receive a copy of this document after I have signed it. I agree to the terms of this loan agreement.

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

(Sign Original Only)

(Option for witness signatures)

Figure: 7 TAC §90.404(a)(9) [§90.404(a)(8)]

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

TEXAS HOME EQUITY SECURITY DOCUMENT (Second Lien)

This Security Document is not intended to finance Borrower's acquisition of the Property.

**THIS SECURITY DOCUMENT SECURES AN EXTENSION OF CREDIT AS DEFINED BY SECTION 50(a)(6),
ARTICLE XVI OF THE TEXAS CONSTITUTION.**

DEFINITIONS

(A) "Loan Agreement" means the Note, Security Document, deed of trust, any other related document, or any combination of those documents, under which you have extended credit to me.

(B) "Security Document" means this document, which is dated _____, together with all Riders to this document.

(C) "I" or "me" means _____, the grantor under this Security Document and the person who signed the Note ("Borrower").

(D) "You" means _____, the Lender and any holder entitled to receive payments under the Note.
Your address is _____. Your NMLS ID is _____. You are the beneficiary under this Security Document.
The loan originator's name is _____. The loan originator's NMLS ID is _____.

(E) "Trustee" is _____. Trustee's address is _____.

(F) "Note" means the promissory Note signed by me and dated _____. The Note states that the amount I owe you is _____ dollars (U.S. \$____) plus interest. I have promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than _____ (maturity date).

(G) "My Homestead" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Extension of Credit" means the debt evidenced by the Note, as defined by Section 50(a)(6), Article XVI of the Texas Constitution and all the documents executed in connection with the debt.

(I) "Riders" means all Riders to this Security Document that I execute. The Riders include (*check box as applicable*):

- Texas Home Equity Condominium Rider
- Texas Home Equity Planned Unit Development Rider
- Other: _____

(J) "Applicable Law" means all controlling applicable federal, Texas and local constitutions, statutes, regulations, administrative rules, local ordinances, judicial and administrative orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or My Homestead by a condominium association, homeowners association, or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section ___ of this Security Document.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: (i) damage or destruction of My Homestead; (ii) condemnation or other taking of all or any part of My Homestead; (iii) conveyance instead of condemnation; or (iv) misrepresentations or omissions related to the value or condition of My Homestead.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note plus (ii) any amounts under this Security Document.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §§2601-2617 [~~§2601-et-seq.~~] and Regulation X (12 C.F.R. Part 1024) [(24 C.F.R. Part 3500)], as [they might be] amended [from time to time], or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Document, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of me" means any party that has taken title to My Homestead, whether or not that party has assumed my obligations under the Loan Agreement.

(R) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Security Document. Such an arrangement usually takes the form of a long-term "ground lease."

SECURED AGREEMENT

To secure this loan, I give you a security interest in My Homestead including existing and future improvements, easements, fixtures, attachments, replacements and additions to the property, insurance refunds, and proceeds. This security interest is intended to be limited to the homestead property and not other collateral, as required under the Texas Constitution.

TRANSFER OF RIGHTS IN THE PROPERTY

I give to the Trustee, in trust, with power of sale, My Homestead located in _____ County at (Street Address) (City) (State) (Zip Code) and further described as:

(Legal Description)

The security interest in My Homestead includes existing and future improvements, easements, fixtures, attachments, replacements and additions to the property, insurance refunds, and proceeds. To the extent required by law, the security interest is limited to homestead property. No additional real or personal property secures the Loan Agreement.

This Security Document secures:

- a. repayment of the Note, and all extensions and modifications of the Note; and
- b. the completion of my promises and agreements under the Loan Agreement.

I warrant that I own My Homestead and have the right to grant you an interest in it. I also warrant that My Homestead is free of any lien, except liens that are publicly recorded. I promise that I will generally defend the title to My Homestead. I will be responsible for your losses that result from a conflicting ownership right in My Homestead. Any default under my agreements with you will be a default of this Security Document.

YOU AND I PROMISE:

LATE CHARGES AND PREPAYMENT

I will timely pay the principal, interest, and any other amounts due under the Loan Agreement. I will comply with the requirements of my escrow account under the Loan Agreement. I will make payments in U.S. currency. If any check is returned to you unpaid, you may select the form of future payments including:

- a. cash;
- b. money order;
- c. certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are federally insured; or
- d. Electronic Funds Transfer.

I will make payments to the location as you direct. You will apply my payments against the loan only when they are received at the designated location. You may change the location for payments if you give me notice.

You may return any partial payment that does not bring the account current. You may accept any payment or partial payment that does not bring the account current without losing your rights to refuse full or partial payments in the future. I will not use any offset or claim against you to relieve me from my duty to make payments under the Loan Agreement.

FUNDS FOR ESCROW ITEMS

I will pay you an amount ("Funds") for:

- a. taxes and assessments and other items that can take priority over your security interest in My Homestead under the Loan Agreement;
- b. leasehold payments or Ground Rents on My Homestead, if any; and
- c. premiums for any insurance you require under the Loan Agreement.

These items are called "Escrow Items." At any time during the term of the Loan Agreement, you may require me to pay Community Association Dues, Fees, and Assessments, if any, as an Escrow Item.

I will promptly give you all notices of amounts to be paid. I will pay you the Funds for Escrow Items unless you, at any time, waive my duty to pay you. Any escrow waiver must be in writing. If you waive my duty to pay you the Funds, I will pay, at your direction, the amounts due for waived Escrow Items. If you require, I will give you receipts showing timely payment. My duty to make Escrow Item payments and to provide receipts is an independent promise in the Loan Agreement.

If you grant me an escrow waiver, you may require me to pay the waived Escrow Items. If I fail to directly pay the waived Escrow Items, you may use any right given to you in the Loan Agreement. You may pay waived Escrow Items and require me to repay you. You may cancel the waiver for Escrow Items at any time by a notice that complies with the Loan Agreement. If you cancel the waiver, I will pay you all Funds that are then required under this Section.

At any time you may collect and hold Funds in an amount:

- a. to permit you to apply the Funds at the time specified under RESPA; and
- b. not to exceed the maximum amount you may require under RESPA.

You will estimate the amount of Funds due on the basis of current data and reasonable estimates of future expenses for Escrow Items or otherwise, according to Applicable Law. The Funds will be held in an institution whose deposits are federally insured (including you, if your deposits are insured) or in any Federal Home Loan Bank.

You will timely pay Escrow Items as required by RESPA. You will not charge me a fee for maintaining or handling my escrow account. You are not required to pay me any interest on the amounts in my escrow account. You will give me an annual accounting of the Funds as required by RESPA. If there is a surplus in my escrow account, you will follow RESPA. If there is a shortage or deficiency, as defined by RESPA, you will notify me, and I will pay you the amount necessary to make up the shortage or deficiency. I will repay the shortage or deficiency in no more than twelve monthly payments. You will promptly return to me any Funds after I have paid the Loan Agreement in full.

CHARGES AND LIENS

I will timely pay all taxes, assessments, charges, and fines relating to My Homestead that can take priority over this Security Document. I also will timely pay leasehold payments or Ground Rents on My Homestead, if any, and Community Association Dues, Fees, and Assessments, if any. If these items are Escrow Items, I will pay them as required by the Loan Agreement. I will promptly satisfy any lien that has priority over this Security Document unless I:

- a. agree in writing to pay the amount secured by the lien in a manner acceptable to you and only so long as I comply with my agreement;
- b. contest the lien in good faith by stopping the enforcement of the lien through legal proceedings (this contest must be satisfactory to you); or
- c. obtain an agreement from the holder of the lien that is satisfactory to you.

If you determine that any part of My Homestead is subject to a lien that can take priority over this Security Document, you may give me a notice identifying the lien. I will satisfy the lien or take one or more of the actions described above in this Section within 10 days of the date of the notice.

PROPERTY INSURANCE

I will insure the current and future improvements to My Homestead against loss by fire, hazards included within the term "extended coverage," and any other hazards including earthquakes and floods, as you may require. I will keep this insurance in the amounts (including deductible levels) and for the periods that you require. You may change these insurance requirements during the term of the Loan Agreement. I have the right to choose an insurance carrier that is acceptable to you. You will exercise your right to disapprove reasonably.

I will pay any fee charged by the Federal Emergency Management Agency for the review of any flood zone determination. You may require me to pay either:

- a. a one-time charge for flood zone determination, certification and tracking services; or
- b. a one-time charge for flood zone determination and certification services; and subsequent charges each time re-mappings or similar changes occur that reasonably might affect the determination or certification.

If I do not keep any required insurance, you may obtain insurance at your option and at my expense. You are not required to purchase any type or amount of insurance. Any insurance you buy will always protect you, but may not protect me, my equity in My Homestead, my contents in My Homestead or protect me from certain hazards or liability. I understand that this insurance may cost significantly more than insurance I can purchase. I will owe you for the cost of any insurance that you buy under this Section. Interest will be charged on this amount at the interest rate used by the Note. The interest will be charged from the date you made the payment. You will give me notice of the amounts I owe under this Section.

You may disapprove any insurance policy or renewal. Any insurance policy must include a standard mortgage clause, and must name you as mortgagee or a loss payee. I will give you all insurance premium receipts and renewal notices, if you request. If I obtain any optional insurance to cover damage or destruction of My Homestead, I will name you as a loss payee. In the event of loss, I will give notice to you and the insurance company. You may file a claim if I do not file one promptly. You will apply insurance proceeds to repair or restore My Homestead unless your interest will be reduced or it will be economically unreasonable to perform the work. You may hold the insurance proceeds until you have had an opportunity to inspect the work and you consider the work to be acceptable. The insurance proceeds may be given in a single payment or multiple payments as the work is completed. You will not pay any interest on the insurance proceeds. If I hire a public adjuster or other third party, I am responsible for the fee. It will not be paid from the insurance proceeds. The insurance proceeds will be applied to the amount I owe if your interest will be reduced or if the work will be economically unreasonable to perform. You will pay me any excess insurance proceeds. You will apply insurance proceeds in the order provided by the Loan Agreement.

If I abandon My Homestead you may file, negotiate, and settle any insurance claim. If the insurance company offers to settle a claim and I do not respond within thirty days to a notice from you, then you may settle the claim. The 30-day period will begin when the notice is given. If I abandon My Homestead, fail to respond to the offer of settlement, or you foreclose on My Homestead, I assign to you:

- a. my rights to any insurance proceeds in an amount not greater than what I owe; and
- b. any of my other rights under insurance policies covering My Homestead.

You may apply the proceeds to repair or restore My Homestead or to the amount that I owe.

HOMESTEAD

I now occupy and use the property secured by this Security Document as my Texas homestead.

PRESERVATION, MAINTENANCE, PROTECTION, AND INSPECTION OF THE PROPERTY

I will not destroy, damage or impair My Homestead, allow it to deteriorate, or commit waste. Whether or not I live in My Homestead, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to My Homestead to avoid further deterioration or damage unless you and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring My Homestead only if you release the insurance or condemnation proceeds for the damage to or the taking of My Homestead. You may release proceeds for the repairs and restoration in a single payment or in a series of payments as the work is completed. I still am obligated to complete repairs or restoration of My Homestead even if there are not enough proceeds to complete the work. You or your agent may inspect My Homestead. You may inspect the interior of My Homestead with reasonable cause. You will give me notice stating reasonable cause when or before the interior inspection occurs.

CONDITIONS CAUSING ACTUAL FRAUD

I commit actual fraud under Section 50(a)(6)(C), Article XVI of the Texas Constitution if I or any person acting at my direction or with my knowledge or consent:

- a. gives you materially false, misleading, or inaccurate information or statements;
- b. fails to provide material information regarding the loan; or
- c. commits any other action or inaction that is determined to be actual fraud.

Material representations include statements concerning my occupancy of My Homestead as a Texas homestead, the statements and promises contained in any document that I sign in connection with the Loan Agreement, and the execution of an acknowledgment of fair market value of My Homestead as described in the Loan Agreement. If I commit actual fraud I will be in default of the Loan Agreement and may be held personally liable.

PROTECTION OF LENDER'S INTEREST IN THE PROPERTY AND RIGHTS UNDER THE SECURITY DOCUMENT

You may do whatever is reasonable to protect your interest in My Homestead, including protecting or assessing the value of My Homestead, and securing or repairing My Homestead. You may do this when:

- a. I fail to perform the promises and agreements contained in the Loan Agreement;
- b. a legal proceeding might significantly affect your interest in My Homestead or rights under the Loan Agreement (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may have priority over the Loan Agreement or to enforce laws or regulations); or
- c. I abandon My Homestead.

In order to protect your interest in My Homestead, you may:

- a. pay amounts that are secured by a lien on My Homestead which has or will have priority over the Loan Agreement;
- b. appear in court; or
- c. pay reasonable attorneys' fees.

You may enter My Homestead to secure it. To secure My Homestead, you may make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. You have no duty to secure My Homestead. You are not liable for failing to take any action listed in this Section. Any amounts you pay under this Section will become my additional debt secured by the Loan Agreement. These amounts will earn interest at the rate specified in the Loan Agreement. The interest will begin on the date the amounts are paid. You will give me notice requesting payment of these amounts. If the Loan Agreement is on a leasehold, I will comply with the lease.

ASSIGNMENT OF MISCELLANEOUS PROCEEDS AND FORFEITURE

Any Miscellaneous Proceeds will be assigned and paid to you. If My Homestead is damaged, Miscellaneous Proceeds will be applied to restore or repair My Homestead. You will only do this if your interest in My Homestead will not be reduced and if the work will be economically reasonable to perform. You will have the right to hold Miscellaneous Proceeds until you inspect My Homestead to ensure the work has been completed to your satisfaction. You must make the inspection promptly. You may release proceeds for the work in a single payment or in multiple payments as the work is completed. You are not required to pay me any interest on the Miscellaneous Proceeds. The Miscellaneous Proceeds will be applied to the amount I owe if your interest in My Homestead will be reduced or the work will be economically unreasonable to perform. You will pay me any excess Miscellaneous Proceeds. You will apply Miscellaneous Proceeds in the order provided by the Loan Agreement.

You will apply all Miscellaneous Proceeds to the amount I owe in the event of a total taking, destruction, or loss in value of My Homestead. You will apply the Miscellaneous Proceeds even if all payments are current. You will give any excess Miscellaneous Proceeds to me.

A partial loss can include a taking, destruction, or loss in value. In the event of a partial loss, the Miscellaneous Proceeds will be applied in one of two ways:

- a. If the fair market value of My Homestead immediately before the partial loss is less than the amount I owe immediately before the partial loss, then you will apply all Miscellaneous Proceeds to the amount I owe even if all payments are current.
- b. If the fair market value of My Homestead immediately before the partial loss is equal to or greater than the amount I owe immediately before the partial loss, then you will apply Miscellaneous Proceeds to the amount I owe in the following manner:
 1. The amount of Miscellaneous Proceeds multiplied by the result of,
 2. The amount I owe immediately before the partial loss divided by the fair market value of My Homestead immediately before the partial loss.

You and I can agree otherwise in writing. You will give any excess Miscellaneous Proceeds to me.

If I abandon My Homestead you may apply Miscellaneous Proceeds either to restore or repair My Homestead, or to the amount I owe.

Damage to My Homestead caused by a third party may result in a civil proceeding. If you give me notice that the third party offers to settle a claim for damages to My Homestead and I fail to respond to you within thirty days, you may accept the offer and apply the Miscellaneous Proceeds either to restore or repair My Homestead or to the amount I owe. If the proceeding results in an award of damages, you will apply the Miscellaneous Proceeds according to this Section.

FORBEARANCE NOT A WAIVER

My successors and I will not be released from liability if you extend the time for payment or modify the payment schedule. If I pay late, you will not have to sue me or my successor to require timely future payments. You may refuse to (1) extend time for payment or (2) modify this Loan Agreement even if I request it. If you do not enforce your rights every time, you may enforce them later.

JOINT AND SEVERAL LIABILITY, SECURITY DOCUMENT EXECUTION, SUCCESSORS OBLIGATED

I understand that you may seek payment from me without first looking to any other person who signed the Note. Any person who signs this Security Document, but not the Note:

- a. has no duty to pay the sums secured by this Security Document;
- b. is not a surety or guarantor;
- c. only grants the person's interest in My Homestead under the terms of this Security Document; and
- d. grants the person's interest in My Homestead to comply with the requirements of Section 50(a)(6)(A), Article XVI of the Texas Constitution.

The lien against My Homestead is a voluntary lien and is a written agreement that shows the consent of each owner and each owner's spouse. You and I may extend, modify, or make any arrangements with respect to the terms of the Loan Agreement. Upon your approval, my successor who assumes my duties in writing will receive all of my rights and benefits under the Loan Agreement. I still will be responsible under the Loan Agreement unless you release me in writing. The Loan Agreement will extend to my assigns or successors.

EXTENSION OF CREDIT CHARGES

If an Applicable Law that sets a maximum charge is finally interpreted so that the interest, loan charges, or fees collected or to be collected with the Loan Agreement exceed the permitted amount, then you will:

- a. reduce the amount to the amount permitted; or
- b. refund the excessive amount to me.

You may choose to apply this refund to the amount I owe or pay it directly to me. If you apply the refund to the amount I owe, the refund will be treated as a partial prepayment.

If I default, you will be able to charge me reasonable fees paid to an attorney who is not your employee to protect your interest in My Homestead.

DELIVERY OF NOTICES

Under the Loan Agreement, you and I will give notices to each other in writing. Any notice under the Loan Agreement will be considered given to me when it is mailed by first class mail or when actually delivered to me at my address if given by another means. You will give notice to My Homestead address unless I provide you a different address. I will notify you promptly of any change of address. I will comply with any reasonable procedure for giving a change of address that you provide. There will only be one address for notice under the Loan Agreement. Notice to me will be considered notice to all persons who are obligated under the Loan Agreement unless Applicable Law requires a separate notice. I may give you notice by delivering or mailing it by first class mail to the address provided by you, unless you require a different procedure. You, however, will not receive notice under the Loan Agreement until you actually receive it. Legal requirements governing notices subject to the Loan Agreement will prevail over conditions in the Loan Agreement.

GOVERNING LAW AND SEVERABILITY

The Loan Agreement will be governed by Texas law and federal law. If any provision in the Loan Agreement conflicts with any legal requirement, all non-conflicting provisions will remain effective.

RULES OF CONSTRUCTION

As used in the Loan Agreement:

- a. words in the singular will mean and include the plural and vice versa; and
- b. the word "may" gives sole discretion without imposing any duty to take action.

LOAN AGREEMENT COPIES

At the time the Loan Agreement is made, you will give me copies of all documents I sign.

TRANSFER OF INTEREST IN PROPERTY

"Interest in My Homestead" means any legal or beneficial interest. This term includes those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement (the intent of which is the transfer of title by me at a future date to a purchaser). If any part of My Homestead is sold or transferred without your prior written permission, you may require immediate payment of all I owe. You will not exercise this option if disallowed by Applicable Law. If you accelerate, you will give me notice. The notice of acceleration will allow me at least 21 days from the date the notice is given to pay all I owe. If I fail to timely pay all I owe, you may pursue any remedy allowed by the Loan Agreement without further notice or demand.

BORROWER'S RIGHT TO REINSTATE AFTER ACCELERATION

I have the right to stop you from enforcing the Loan Agreement any time before the earliest of:

- a. 5 days before sale of My Homestead under any power of sale included in the Loan Agreement;
- b. the day required by Applicable Law for the termination of my right to reinstate; or
- c. the entry of a judgment enforcing the Loan Agreement.

I can stop the enforcement of the Loan Agreement and reinstate the Loan Agreement if all the following conditions are met:

- a. You are paid what I owe under the Loan Agreement as if no acceleration had occurred;
- b. I cure any default of any promise or agreement;
- c. You are paid all expenses allowed by Applicable Law, including reasonable attorneys' fees and other fees incurred for the purpose of protecting your interest in My Homestead and rights under the Loan Agreement;
- d. I comply with any reasonable requirement to assure you that your interest in My Homestead will remain intact; and
- e. I comply with any reasonable requirement to assure you that my ability to pay what I owe will remain intact.

You may require me to pay for the reinstatement in one or more of the following forms:

- a. cash;
- b. money order;
- c. certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are federally insured; or
- d. Electronic Funds Transfer.

Upon reinstatement, the Loan Agreement will remain effective as if no acceleration had occurred. However, this right to reinstate will not apply if I sell or transfer any interest in My Homestead without your permission.

SALE OF NOTE, CHANGE OF LOAN SERVICER, NOTICE OF GRIEVANCE, LENDER'S RIGHT TO COMPLY

A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA. If a different company services the Loan Agreement, the servicing duties to me will be transferred.

You or I must give notice of any violation of the Loan Agreement to the other and the opportunity to address the alleged violation before starting or joining any legal action. You and I will give each other a reasonable amount of time to address the alleged violation. If the law provides a specified time period that must be given to address a violation, that time period will be a reasonable time for purposes of this paragraph. Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section.

You and I intend to strictly follow the provisions of the Texas Constitution that relate to the Loan Agreement (Section 50(a)(6), Article XVI of the Texas Constitution).

No agreement between you and me or any third party will limit your ability to comply with your duties under the Loan Agreement and the Applicable Law. The Loan Agreement is being made on the condition that you have a reasonable amount of time to correct any violation of Applicable Law. I will notify you of any violation and give you a reasonable amount of time to comply before taking any action. I will cooperate with your reasonable effort to correct the Loan Agreement. You will forfeit all principal and interest as required by Applicable Law if you have:

- a. received my notice;
- b. had a reasonable amount of time to correct the violation; and
- c. failed to correct the violation.

You and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law.

You and I intend to conform the Loan Agreement to the provisions of the Texas Constitution and Texas law. If any promise, payment, duty or provision of the Loan Agreement is in conflict with the Applicable Law, then the promise, payment, duty or provision will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Your right to correct any violation will survive my paying off the Loan Agreement. My right to correct will override any conflicting provision of the Loan Agreement.

Your right-to-comply as provided in this Section will survive the payoff of the Loan Agreement. The provisions of this Section will supersede any inconsistent provision of the Loan Agreement.

HAZARDOUS SUBSTANCES

Hazardous Substances:

- a. "Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials;
- b. "Environmental Law" means federal laws and laws of the jurisdiction where My Homestead is located that relate to health, safety or environmental protection;
- c. "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and
- d. "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in My Homestead. I will not do or allow anyone else to do, anything affecting My Homestead:

- a. that is in violation of any Environmental Law;
- b. that creates an Environmental Condition; or
- c. that, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of My Homestead.

The presence, use, or storage on My Homestead of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and for the maintenance of My Homestead are allowed. This includes Hazardous Substances found in consumer products.

I will promptly give you written notice of:

- a. any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving My Homestead and any Hazardous Substance or Environmental Law of which I have actual knowledge;
- b. any Environmental Condition, including any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and
- c. any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of My Homestead.

If I learn that, or am notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting My Homestead is necessary, I promptly will take all necessary remedial actions in accordance with Environmental Law. You will have no obligation for an Environmental Cleanup.

ACCELERATION AND REMEDIES

You will give me notice prior to acceleration if I am in default under the Loan Agreement. The notice will specify:

- a. the default;
- b. the action required to cure the default;
- c. a date, not less than 21 days from the date you give me notice, to cure the default; and
- d. that my failure to cure the default on or before the specified date will result in acceleration of all that I owe under the Loan Agreement and sale of My Homestead.

You will inform me of my right to reinstate after acceleration and my right to bring a court action to contest the alleged default or to assert any other defense to the acceleration and sale. If the default is not cured before the specified date, you have the option to require immediate payment in full of all I owe. If you are not paid all I owe, you may sell My Homestead or seek other remedies allowed by Applicable Law without further notice. You may collect your reasonable expenses incurred in seeking the remedies provided in this Section. These expenses may include court costs, attorneys' fees, and costs of title search.

This lien against My Homestead may be foreclosed upon only by a court order. You may, at your option, follow any rules of civil procedure for expedited foreclosure proceedings related to the foreclosure of liens under Section 50(a)(6), Article XVI of the Texas Constitution ("Rules"). The power of sale granted by the Loan Agreement will be exercised according to the Rules. I understand the power of sale is not a confession of judgment or a power of attorney to confess judgment or an appearance by me in a judicial proceeding.

POWER OF SALE

You have a fully enforceable lien on My Homestead. Your remedies for my default include an efficient means of foreclosure under the law. You and the Trustee have all powers to conduct a foreclosure except as limited by the Texas Supreme Court. If you choose to use the power of sale, you will give me notice of the time, place and terms of the sale by posting and filing notice at least 21 days before the sale as provided by law. You will give me notice by mail as required by law. The sale will be conducted at a public place. The sale will be held:

- a. on the first Tuesday of a month;
- b. at a time stated in the notice or no later than 3 hours after the time; and
- c. between 10:00 a.m. and 4:00 p.m.

I allow the Trustee to sell My Homestead to the highest bidder for cash in one or more parcels and in any order the Trustee determines. You may purchase My Homestead at any sale. The Rules will prevail in a conflict between the procedures and the Rules. If a conflict arises, the conflicting provision will be corrected in order to comply.

Trustee will give a Trustee's deed to the foreclosure sale purchaser. A Trustee's deed will convey:

- a. good title to My Homestead that cannot be defeated; and
- b. title with promises of general warranty from me.

I will defend the purchaser's title to My Homestead against all claims and demands. The description of facts contained in the Trustee's deed will be sufficient to legally prove the truth of the statements made in the deed. Trustee will apply the proceeds of the sale in the following order:

- a. to all expenses of the sale, including court costs and reasonable Trustee's and attorneys' fees;
- b. what I owe; and
- c. any excess to the person or persons legally entitled to it.

If My Homestead is sold through a foreclosure sale governed by this Section, I or any person in possession of My Homestead through me, will give up possession of My Homestead without delay. A person who does not give up possession is a holdover and may be removed by a court order.

RELEASE

You will cancel and return the Note to me and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the lien to a lender that is refinancing the Loan Agreement. I will pay only the cost of recording the release of lien. My acceptance of the release or endorsement and assignment will end all of your duties under Section 50(a)(6), Article XVI of the Texas Constitution.

NON-RECOURSE LIABILITY

You are entitled to all rights, superior title, liens and equities owned or claimed by any grantor or holder of any liens and debts due before the signing of the Loan Agreement. You are entitled to these rights whether you acquire the liens or debts by assignment or the holder releases them upon payment.

Each person who signs the Security Document is responsible for each promise and duty in the Security Document, subject to limitation of personal liability described below. The Texas Constitution provides that the Loan Agreement is given without personal liability against each owner of My Homestead and the spouse of each owner. Personal liability may be obtained if the Loan Agreement was obtained by actual fraud. This means that, unless actual fraud is found by a court, you are only able to enforce your rights under the Loan Agreement against My Homestead. You are not able to seek personal liability against the owner of My Homestead or the spouse of an owner. If the Loan Agreement is obtained by actual fraud, then I will be personally liable for the payment of any amounts due under the Loan Agreement. This means that a personal judgment could be obtained against me for a deficiency as a result of a foreclosure sale of My Homestead. A personal judgment would subject my other assets for the payment of the debt.

Unless prohibited by the Texas Constitution, this Section will not:

- a. impair in any way the Loan Agreement or your right to collect all that I owe under the Loan Agreement;
- b. affect your right to any promise or condition of the Loan Agreement.

PROCEEDS

I am not required to apply the proceeds of the Loan Agreement to repay another debt except a debt secured by My Homestead or a debt to another lender.

NO ASSIGNMENT OF WAGES

I have not assigned wages as security for the Loan Agreement.

ACKNOWLEDGMENT OF FAIR MARKET VALUE

You and I agreed in writing to the fair market value of My Homestead on the date of the Loan Agreement.

TRUSTEES AND TRUSTEE LIABILITY

One or more Trustees acting alone or together may exercise or perform all rights, remedies and duties of the Trustee under the Loan Agreement. You may remove or change any Trustee (e.g., add one or more Trustees or appoint a successor Trustee to any Trustee). This removal or change of Trustee must be in writing and may be:

- a. at your option;
- b. with or without cause; and
- c. by power of attorney or otherwise.

The substitute, additional or successor Trustee will receive, without any further act, the title, rights, remedies, powers and duties under the Loan Agreement and Applicable Law.

Trustee may rely, without liability, upon any notice, request, consent, demand, statement or other document reasonably believed by Trustee to be valid. Trustee will not be liable for any act or omission unless the act or omission is willful.

WAIVER OF ADDITIONAL COLLATERAL

I agree that you waive all terms in any of your current or future loan documentation that:

- a. creates a default of the Loan Agreement by a default of another obligation that is not secured by My Homestead;
- b. provides for collateral other than My Homestead (including cross collateralization or dragnet provisions);
- c. creates personal liability for me for the Loan Agreement (unless this loan was obtained by actual fraud); or
- d. creates a personal guaranty.

DEFAULT

Any default of my agreements with you will be a default of this Security Document.

BY SIGNING BELOW, I accept and agree to the terms and promises contained in the Loan Agreement and in any Rider I sign which is recorded with it. (DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. THIS DOCUMENT MUST BE SIGNED AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW OR A TITLE COMPANY. I MUST RECEIVE A COPY OF ANY DOCUMENT I SIGN.)

I MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THE LOAN AGREEMENT WITHOUT PENALTY OR CHARGE.

-Borrower

_____(seal)

Printed Name: _____
(Please Complete)

_____(seal)
-Borrower

_____(seal)
-Borrower

_____(seal)
-Borrower

(Acknowledgment on following page)

Figure: 7 TAC §90.503(b)(2)(C)

My Payment Schedule will be:

<u>Number of Payments</u>	<u>Amount of Payments</u>	<u>When Payments Are Due</u>

Figure: 7 TAC §90.503(b)(6)(A) [~~§90.503(b)(8)(A)~~]

"The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I will not have to pay a penalty, and I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe."

Figure: 7 TAC §90.503(b)(6)(B) [~~§90.503(b)(8)(B)~~]

"The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. The unpaid cash advance does not include the administrative fee, late charges, or returned check charges. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe."

Figure: 7 TAC §90.503(b)(6)(C) [~~§90.503(b)(8)(C)~~]

"The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. The unpaid cash advance does not include the administrative fee and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment. I may prepay my loan in full early without paying a penalty.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any other charges I owe."

Figure: 7 TAC §90.503(b)(8) [~~§90.503(b)(10)~~]

"I will be in default if:

- a. I do not timely make a payment to the person or place you direct;
- b. I break any promise I made in the Loan Agreement;
- c. I allow a lien to be entered against the Property unless you agree in writing;
- d. I sell, lease, or dispose of the Property;
- e. I use the Property for an illegal purpose; or
- f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the Loan Agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default. You may not demand that I pay the loan in full solely because I default under any debt not secured by the Property."

Figure: 7 TAC §90.503(b)(9) [~~§90.503(b)(11)~~]

PROPERTY INSURANCE: I must keep the Property insured against damage or loss in at least the amount I owe. 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.

If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.

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. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. You will insure the Property for the lesser amount of the value of the Property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

Property Insurance \$ _____ Term _____

Figure: 7 TAC §90.503(b)(10) [~~§90.503(b)(12)~~]

"Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

Credit Life, one borrower \$ _____ Credit Life, both borrowers \$ _____ Term _____
 Credit Disability, one borrower \$ _____ Credit Disability, both borrowers \$ _____ Term _____

If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

 Borrower's Signature Date

<u>Premium Due with the First Month's Loan Payment</u>	<u>First Year Premium</u>	<u>Insurance Type:</u>
\$ _____	\$ _____	
\$ _____	\$ _____	
\$ _____	\$ _____	

 Co-Borrower's Signature Date

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

- (1) your receipt of my written request for cancellation;
- (2) cancellation under the insurance certificate or policy;
- (3) payment in full of my loan; or
- (4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium."

Figure: 7 TAC §90.503(b)(23) [~~§90.503(b)(25)~~]

"Do not sign if there are blanks left to be completed in this document.

I must receive a copy of this document after I have signed it. I agree to the terms of this Loan Agreement.

_____(Seal)

-Borrower

____(Seal)

Borrower

_____(Seal)

-Borrower

____(Seal)

Borrower

(Sign Original Only)

(Option for witness signatures)"

Figure: 7 TAC §90.504(a)(8) [§90.504(a)(7)]

PURCHASE MONEY NOTE (Fixed Rate – Second Lien)

CREDITOR/LENDER _____
 CREDITOR/LENDER NMLS ID _____
 LOAN ORIGINATOR _____
 LOAN ORIGINATOR NMLS ID _____
 ADDRESS _____

DATE OF NOTE _____
 ACCOUNT/CONTRACT NO. _____
 BORROWER _____
 ADDRESS _____

PROPERTY ADDRESS: _____

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

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. \$ _____
My Payment Schedule will be:			
Number of Payments	Amount of Payments	When Payments Are Due	

Security: You will have a security interest in my homestead.
Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.
Prepayment: (Scheduled Installment Earnings Method): If I pay off early, I may be entitled to a refund of part of the Finance Charge. I will not have to pay a penalty. **(True Daily Earnings Method):** If I pay off early, I will not have to pay a penalty.
Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

1. BORROWER'S PROMISE TO PAY

Scheduled Installment Earnings Method: I promise to pay the Total of Payments to the order of you. The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule. **True Daily Earnings Method:** I promise to pay the cash advance plus the accrued interest to the order of you. The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

2. LATE CHARGE

General Late Charge: If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment. **High-Cost Mortgage Loan Late Charge:** If I don't pay all of a payment within 15 days after it is due, you can charge me a late charge. The late charge will be 4% of the amount of the payment past due.

3. AFTER MATURITY INTEREST

If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

4. PREPAYMENT

Scheduled Installment Earnings Method: I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. True Daily Earnings Method: I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

5. FINANCE CHARGE AND REFUND METHOD

For contracts using Scheduled Installment Earnings Method - Section 342.301 rate loans: The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I will not have to pay a penalty, and I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using Scheduled Installment Earnings Method with prepayments option - Section 342.301 rate loans: The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. The unpaid cash advance does not include the administrative fee, late charges, or returned check charges. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using True Daily Earnings Method - Section 342.301 rate loans: The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. The unpaid cash advance does not include the administrative fee and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment. I may prepay my loan in full early without paying a penalty.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any other charges I owe.

6. FEE FOR DISHONORED CHECK

I agree to pay you a fee of up to \$30 for a returned check. You may add the fee to the amount I owe or collect it separately.

7. DEFAULT

I will be in default if:

- a. I do not timely make a payment to the person or place you direct;
- b. I break any promise I made in the Loan Agreement;
- c. I allow a lien to be entered against the Property unless you agree in writing;
- d. I sell, lease, or dispose of the Property;
- e. I use the Property for an illegal purpose; or
- f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the Loan Agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default. You may not demand that I pay the loan in full solely because I default under any debt not secured by the Property.

8. PROPERTY INSURANCE

PROPERTY INSURANCE: I must keep the Property insured against damage or loss in at least the amount I owe. 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.

If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.

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. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. You will insure the Property for the lesser amount of the value of the Property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

Property Insurance \$ _____ Term _____

9. CREDIT INSURANCE

Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

Credit Life, one borrower \$ _____ Credit Life, both borrowers \$ _____ Term _____
 Credit Disability, one borrower \$ _____ Credit Disability, both borrowers \$ _____ Term _____

If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

			_____ Borrower's Signature	_____ Date
Premium Due with the First Month's <u>Loan Payment</u>	First Year <u>Premium</u>	Insurance <u>Type</u>		
\$	\$			
\$	\$			
\$	\$			
			_____ Co-Borrower's Signature	_____ Date

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

- (1) your receipt of my written request for cancellation;
- (2) cancellation under the insurance certificate or policy;
- (3) payment in full of my loan; or
- (4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium.

10. MAILING OF NOTICES TO BORROWER

You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it.

11. DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the Property is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law.

If you exercise this option, you will give me notice that you are demanding immediate payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement.

12. NO WAIVER OF LENDER'S RIGHTS

If you don't enforce your rights every time, you can still enforce them later.

13. COLLECTION EXPENSES

If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by Applicable Law. These expenses include, for example, reasonable attorneys' fees.

14. JOINT LIABILITY

I understand that you may seek payment from only me without first looking to any other Borrower.

15. USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than Applicable Law allows.

16. SAVINGS CLAUSE

If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with any law will be modified to comply with the law. The rest of the Loan Agreement remains valid.

17. PRIOR AGREEMENTS

This written Loan Agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this Loan Agreement. Any change to this Loan Agreement must be in writing. Both you and I have to sign written agreements.

18. THIS NOTE SECURED BY A DEED OF TRUST

In addition to the protections given to the Note Holder under this Note, a Security Document, dated _____, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. The Security Document describes how and under what conditions I may be required to make immediate payment in full of any amounts that I owe under this Note.

19. APPLICATION OF LAW

Federal law and Texas law apply to this Loan Agreement.

20. OCCC [COMPLAINTS AND INQUIRIES] NOTICE

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov.

~~[The (name of Lender or Note Holder) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (name of Lender or Note Holder) should contact the Office of Consumer Credit Commissioner through one of the means indicated below:]~~

~~[In Person or U.S. Mail: 2601 North Lamar Boulevard, Austin, Texas 78705 4207]~~

~~[Telephone No.: (800) 538-1579]~~

~~[Fax No.: (512) 936-7610]~~

~~[E-mail: consumer.complaints@occc.state.tx.us]~~

~~[Website: www.occc.state.tx.us]~~

21. COLLATERAL

The collateral described above by the property address is subject to the lien of the Security Document.

Do not sign if there are blanks left to be completed in this document.

I must receive a copy of this document after I have signed it. I agree to the terms of this Loan Agreement.

_____(Seal)
-Borrower
_____(Seal)
-Borrower

_____(Seal)
-Borrower
_____(Seal)
-Borrower

(Sign Original Only)

(Option for witness signatures)

Figure: 7 TAC §90.504(a)(9) [§90.504(a)(8)]

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

PURCHASE MONEY SECURITY DOCUMENT (Second Lien)

DEFINITIONS

(A) "Loan Agreement" means the Note, Security Document, deed of trust, any other related document, or any combination of those documents, under which you have made a loan to me.

(B) "Security Document" means this document, which is dated _____, together with all Riders to this document.

(C) "I" or "me" means _____, the grantor under this Security Document and the person who signed the Note ("Borrower").

(D) "You" means _____, the Lender and any holder entitled to receive payments under the Note.
Your address is _____. Your NMLS ID is _____. You are the beneficiary under this Security Document.
The loan originator's name is _____. The loan originator's NMLS ID is _____.

(E) "Trustee" is _____. Trustee's address is _____.

(F) "Note" means the Purchase Money Note signed by me and dated _____. The Note states that the amount I owe you is _____ dollars (U.S. \$ _____) plus interest. I have promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than _____ (maturity date).

(G) "Property" means the real estate that is described below under the heading "Transfer of Rights in the Property."

(H) "Riders" means all Riders to this Security Document that I execute. The Riders include (*check box as applicable*):

- Texas Purchase Money Condominium Rider
- Texas Purchase Money Planned Unit Development Rider
- Other: _____

(I) "Applicable Law" means all controlling applicable federal, Texas and state constitutions, statutes, regulations, administrative rules, local ordinances, and judicial and administrative orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or the Property by a condominium association, homeowners association, or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section _____ of this Security Document.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: damage or destruction of the Property; condemnation or other taking of all or any part of the Property; conveyance instead of condemnation, or misrepresentations or omissions related to the value or condition of the Property.

(N) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amounts under this Security Document.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §§2601-2617 [~~§2601 et seq.~~]) and Regulation X (12 C.F.R. Part 1024) [(~~24 C.F.R. Part 3500~~)], as [~~they might be~~] amended [~~from time to time~~], or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Document, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of me" means any party that has taken title to the Property, whether or not that party has assumed my obligations under the Loan Agreement.

(Q) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Security Document. Such an arrangement usually takes the form of a long-term "ground lease."

SECURED AGREEMENT

To secure this Loan Agreement I give you a security interest in the Property including existing and future improvements, easements, fixtures, attachments, replacements and additions to the Property, insurance refunds, and proceeds.

TRANSFER OF RIGHTS IN THE PROPERTY

I give to the Trustee, in trust, with power of sale, the Property located in _____ County at *(Street Address) (City) (State) (Zip Code)* and further described as:

(Legal Description)

The security interest in the Property includes existing and future improvements, easements, fixtures, attachments, replacements and additions to the Property, insurance refunds, and proceeds.

This Security Document secures:

- a. repayment of the Note, and all extensions and modifications of the Note; and
- b. the completion of my promises and agreements under the Loan Agreement.

I promise that I own the Property and have the right to grant you an interest in it. I also promise that the Property is free of any lien, except liens that are publicly recorded. I promise that I will generally defend the title to the Property. I will be responsible for your losses that result from a conflicting ownership right in the Property. Any default under my agreements with you will be a default of this Security Document.

YOU AND I PROMISE:

PAYMENT OF LATE CHARGES AND PREPAYMENT

I will timely pay the principal, interest, and any other amounts due under the Loan Agreement. I will comply with the requirements of my escrow account under the Loan Agreement. I will make payments in U.S. currency. If any check is returned to you unpaid, you may select the form of future payments including:

- a. cash;
- b. money order;
- c. certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are federally insured; or
- d. Electronic Funds Transfer.

I will make payments to the location as you direct. You will apply my payments against the Loan Agreement only when they are received at the designated location. You may change the location for payments if you give me notice.

You may return any partial payment that does not bring the account current. You may accept any payment or partial payment that does not bring the account current without losing your rights to refuse full or partial payments in the future. I will not use any offset or claim against you to relieve me from my duty to make payments under the Loan Agreement.

FUNDS FOR ESCROW ITEMS

I will pay you an amount ("Funds") for:

- a. taxes and assessments and other items that can take priority over your security interest in the Property under the Loan Agreement;
- b. leasehold payments or Ground Rents on the Property, if any; and
- c. premiums for any insurance you require under the Loan Agreement.

These items are called "Escrow Items." At any time during the term of the Loan Agreement, you may require me to pay Community Association Dues, Fees, and Assessments, if any, as an Escrow Item.

I will promptly give you all notices of amounts to be paid. I will pay you the Funds for Escrow Items unless you, at any time, waive my duty to pay you. Any escrow waiver must be in writing. If you waive my duty to pay you the Funds, I will pay, at your direction, the amounts due for waived Escrow Items. If you require, I will give you receipts showing timely payment. My duty to make Escrow Item payments and to provide receipts is an independent promise in the Loan Agreement.

If you grant me an escrow waiver, you may require me to pay the waived Escrow Items. If I fail to directly pay the waived Escrow Items, you may use any right given to you in the Loan Agreement. You may pay waived Escrow Items and require me to repay you. You may cancel the waiver for Escrow Items at any time by a notice that complies with the Loan Agreement. If you cancel the waiver, I will pay you all Funds that are then required under this Section.

At any time you may collect and hold Funds in an amount:

- a. to permit you to apply the Funds at the time specified under RESPA; and
- b. not to exceed the maximum amount you may require under RESPA.

You will estimate the amount of Funds due on the basis of current data and reasonable estimates of future expenses for Escrow Items or otherwise, according to Applicable Law. The Funds will be held in an institution whose deposits are federally insured (including you, if your deposits are insured) or in any Federal Home Loan Bank.

You will timely pay Escrow Items as required by RESPA. You will not charge me a fee for maintaining or handling my escrow account. You are not required to pay me any interest on the amounts in my escrow account. You will give me an annual accounting of the Funds as required by RESPA. If there is a surplus in my escrow account, you will follow RESPA. If there is a shortage or deficiency, as defined by RESPA, you will notify me, and I will pay you the amount necessary to make up the shortage or deficiency. I will repay the shortage or deficiency in no more than twelve monthly payments. You will promptly return to me any Funds after I have paid the Loan Agreement in full.

CHARGES AND LIENS

I will timely pay all taxes, assessments, charges, and fines relating to the Property that can take priority over this Security Document. I also will timely pay leasehold payments or Ground Rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. If these items are Escrow Items, I will pay them as required by the Loan Agreement. I will promptly satisfy any lien that has priority over this Security Document unless I:

- a. agree in writing to pay the amount secured by the lien in a manner acceptable to you and only so long as I comply with my agreement;
- b. contest the lien in good faith by stopping the enforcement of the lien through legal proceedings (this contest must be satisfactory to you); or
- c. obtain an agreement from the holder of the lien that is satisfactory to you.

If you determine that any part of the Property is subject to a lien that can take priority over this Security Document, you may give me a notice identifying the lien. I will satisfy the lien or take one or more of the actions described above in this Section within 10 days of the date of the notice.

PROPERTY INSURANCE

I will insure the current and future improvements to the Property against loss by fire, hazards included within the term "extended coverage," and any other hazards including earthquakes and floods, as you may require. I will keep this insurance in the amounts (including deductible levels) and for the periods that you require. You may change these insurance requirements during the term of the Loan Agreement. I have the right to choose an insurance carrier that is acceptable to you. You will exercise your right to disapprove reasonably.

I will pay any fee charged by the Federal Emergency Management Agency for the review of any flood zone determination. You may require me to pay either:

- a. a one-time charge for flood zone determination, certification and tracking services; or
- b. a one-time charge for flood zone determination and certification services; and subsequent charges each time re-mappings or similar changes occur that reasonably might affect the determination or certification.

If I do not keep any required insurance, you may obtain insurance at your option and at my expense. You are not required to purchase any type or amount of insurance. Any insurance you buy will always protect you, but may not protect me, my equity in the Property, my contents in the Property or protect me from certain hazards or liability. I understand that this insurance may cost significantly more than insurance I can purchase. I will owe you for the cost of any insurance that you buy under this Section. Interest will be charged on this amount at the interest rate used by the Note. The interest will be charged from the date you made the payment. You will give me notice of the amounts I owe under this Section.

You may disapprove any insurance policy or renewal. Any insurance policy must include a standard mortgage clause, and must name you as mortgagee or a loss payee. I will give you all insurance premium receipts and renewal notices, if you request. If I obtain any optional insurance to cover damage or destruction of the Property, I will name you as a loss payee. In the event of loss, I will give notice to you and the insurance company. You may file a claim if I do not file one promptly. You will apply insurance proceeds to repair or restore the Property unless your interest will be reduced or it will be economically unreasonable to perform the work. You may hold the insurance proceeds until you have had an opportunity to inspect the work and you consider the work to be acceptable. The insurance proceeds may be given in a single payment or multiple payments as the work is completed. You will not pay any interest on the insurance proceeds. If I hire a public adjuster or other third party, I am responsible for the fee. It will not be paid from the insurance proceeds. The insurance proceeds will be applied to the amount I owe if your interest will be reduced or if the work will be economically unreasonable to perform. You will pay me any excess insurance proceeds. You will apply insurance proceeds in the order provided by the Loan Agreement.

If I abandon the Property you may file, negotiate, and settle any insurance claim. If the insurance company offers to settle a claim and I do not respond within thirty days to a notice from you, then you may settle the claim. The 30-day period will begin when the notice is given. If I abandon the Property, fail to respond to the offer of settlement, or you foreclose on the Property, I assign to you:

- a. my rights to any insurance proceeds in an amount not greater than what I owe; and
- b. any of my other rights under insurance policies covering the Property.

You may apply the proceeds to repair or restore the Property or to the amount that I owe.

PRESERVATION, MAINTENANCE, PROTECTION, AND INSPECTION OF THE PROPERTY

I will not destroy, damage or impair the Property, allow it to deteriorate, or commit waste. Whether or not I live in the Property, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to the Property to avoid further deterioration or damage unless you and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring the Property only if you release the insurance or condemnation proceeds for the damage to or the taking of the Property. You may release proceeds for the repairs and restoration in a single payment or in a series of payments as the work is completed. I still am obligated to complete repairs or restoration of the Property even if there are not enough proceeds to complete the work. If this Security Document secures a unit in a condominium or planned unit development, I will perform all of my obligations under the declaration or covenants creating or governing the condominium or planned unit development, and any other relevant document. You or your agent may inspect the Property. You may inspect the interior of the Property with reasonable cause. You will give me notice stating reasonable cause when or before the interior inspection occurs.

PROTECTION OF LENDER'S INTEREST IN THE PROPERTY AND RIGHTS UNDER THE SECURITY DOCUMENT

You may do whatever is reasonable to protect your interest in the Property, including protecting or assessing the value of the Property, and securing or repairing the Property. You may do this when:

- a. I fail to perform the promises and agreements contained in the Loan Agreement;
- b. a legal proceeding might significantly affect your interest in the Property or rights under the Loan Agreement (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may have priority over the Loan Agreement or to enforce laws or regulations); or
- c. I abandon the Property.

In order to protect your interest in the Property, you may:

- a. pay amounts that are secured by a lien on the Property which has or will have priority over the Loan Agreement;
- b. appear in court; or
- c. pay reasonable attorneys' fees.

You may enter the Property to secure it. To secure the Property, you may make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. You have no duty to secure the Property. You are not liable for failing to take any action listed in this Section. Any amounts you pay under this Section will become my additional debt secured by the Loan Agreement. These amounts will earn interest at the rate specified in the Loan Agreement. The interest will begin on the date the amounts are paid. You will give me notice requesting payment of these amounts. If the Loan Agreement is on a leasehold, I will comply with the lease.

ASSIGNMENT OF MISCELLANEOUS PROCEEDS AND FORFEITURE

Any Miscellaneous Proceeds will be assigned and paid to you. If the Property is damaged, Miscellaneous Proceeds will be applied to restore or repair the Property. You will only do this if your interest in the Property will not be reduced and if the work will be economically reasonable to perform. You will have the right to hold Miscellaneous Proceeds until you inspect the Property to ensure the work has been completed to your satisfaction. You must make the inspection promptly. You may release proceeds for the work in a single payment or in multiple payments as the work is completed. You are not required to pay me any interest on the Miscellaneous Proceeds. The Miscellaneous Proceeds will be applied to the amount I owe if your interest in the Property will be reduced or the work will be economically unreasonable to perform. You will pay me any excess Miscellaneous Proceeds. You will apply Miscellaneous Proceeds in the order provided by the Loan Agreement.

You will apply all Miscellaneous Proceeds to the amount I owe in the event of a total taking, destruction, or loss in value of the Property. You will apply the Miscellaneous Proceeds even if all payments are current. You will give any excess Miscellaneous Proceeds to me.

A partial loss can include a taking, destruction, or loss in value. In the event of a partial loss, the Miscellaneous Proceeds will be applied in one of two ways:

- a. If the fair market value of the Property immediately before the partial loss is less than the amount I owe immediately before the partial loss, then you will apply all Miscellaneous Proceeds to the amount I owe even if all payments are current.
- b. If the fair market value of the Property immediately before the partial loss is equal to or greater than the amount I owe immediately before the partial loss, then you will apply Miscellaneous Proceeds to the amount I owe in the following manner:
 1. The amount of Miscellaneous Proceeds multiplied by the result of,
 2. The amount I owe immediately before the partial loss divided by the fair market value of the Property immediately before the partial loss.

You and I can agree otherwise in writing. You will give any excess Miscellaneous Proceeds to me.

If I abandon the Property, you may apply Miscellaneous Proceeds either to restore or repair the Property, or to the amount I owe.

Damage to the Property caused by a third party may result in a civil proceeding. If you give me notice that the third party offers to settle a claim for damages to the Property and I fail to respond to you within thirty days, you may accept the offer and apply the Miscellaneous Proceeds either to restore or repair the Property or to the amount I owe. If the proceeding results in an award of damages, you will apply the Miscellaneous Proceeds according to this Section.

FORBEARANCE NOT A WAIVER

My successors and I will not be released from liability if you extend the time for payment or modify the payment schedule. If I pay late, you will not have to sue me or my successor to require timely future payments. You may refuse to (1) extend time for payment or (2) modify this Loan Agreement even if I request it. If you do not enforce your rights every time, you may enforce them later.

JOINT AND SEVERAL LIABILITY, SECURITY DOCUMENT EXECUTION, SUCCESSORS OBLIGATED

I understand that you may seek payment from me without first looking to any other person who signed the Note. Any person who signs this Security Document, but not the Note:

- a. has no duty to pay the sums secured by this Security Document;
- b. is not a surety or guarantor; and
- c. only grants the person's interest in the Property under the terms of this Security Document.

The lien against the Property is a voluntary lien and is a written agreement that shows the consent of each owner. You and I may extend, modify, or make any arrangements with respect to the terms of the Loan Agreement. Upon your approval, my successor who assumes my duties in writing will receive all of my rights and benefits under the Loan Agreement. I still will be responsible under the Loan Agreement unless you release me in writing. The Loan Agreement will extend to your assigns or successors.

EXTENSION OF CREDIT CHARGES

If an Applicable Law that sets a maximum charge is finally interpreted so that the interest, loan charges, or fees collected or to be collected with the Loan Agreement exceed the permitted amount, then you will:

- a. reduce the amount to the amount permitted; or
- b. refund the excessive amount to me.

You may choose to apply this refund to the amount I owe or pay it directly to me. If you apply the refund to the amount I owe, the refund will be treated as a partial prepayment.

If I default, you will be able to charge me reasonable fees paid to an attorney who is not your employee to protect your interest in the Property.

DELIVERY OF NOTICES

Under the Loan Agreement, you and I will give notices to each other in writing. Any notice under the Loan Agreement will be considered given to me when it is mailed by first class mail or when actually delivered to me at my address if given by another means. You will give notice to the Property address unless I provide you a different address. I will notify you promptly of any change of address. I will comply with any reasonable procedure for giving a change of address that you provide. There will only be one address for notice under the Loan Agreement. Notice to me will be considered notice to all persons who are obligated under the Loan Agreement unless Applicable Law requires a separate notice. I may give you notice by delivering or mailing it by first class mail to the address provided by you, unless you require a different procedure. You, however, will not receive notice under the Loan Agreement until you actually receive it. Legal requirements governing notices subject to the Loan Agreement will prevail over conditions in the Loan Agreement.

GOVERNING LAW AND SEVERABILITY

The Loan Agreement will be governed by Texas law and federal law. If any provision in the Loan Agreement conflicts with any legal requirement, all non-conflicting provisions will remain effective.

RULES OF CONSTRUCTION

As used in the Loan Agreement:

- a. words in the singular will mean and include the plural and vice versa; and
- b. the word "may" gives sole discretion without imposing any duty to take action.

LOAN AGREEMENT COPIES

At the time the Loan Agreement is made, you will give me copies of all documents I sign.

TRANSFER OF INTEREST IN PROPERTY

"Interest in the Property" means any legal or beneficial interest. This term includes those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement (the intent of which is the transfer of title by me at a future date to a purchaser). If any part of the Property is sold or transferred without your prior written permission, you may require immediate payment of all I owe. You will not exercise this option if disallowed by Applicable Law. If you accelerate, you will give me notice. The notice of acceleration will allow me at least 21 days from the date the notice is given to pay all I owe. If I fail to timely pay all I owe, you may pursue any remedy allowed by the Loan Agreement without further notice or demand.

BORROWER'S RIGHT TO REINSTATE AFTER ACCELERATION

I have the right to stop you from enforcing the Loan Agreement any time before the earliest of:

- a. 5 days before sale of the Property under any power of sale included in the Loan Agreement;
- b. the day required by Applicable Law for the termination of my right to reinstate; or
- c. the entry of a judgment enforcing the Loan Agreement.

I can stop the enforcement of the Loan Agreement and reinstate the Loan Agreement if all the following conditions are met:

- a. You are paid what I owe under the Loan Agreement as if no acceleration had occurred;
- b. I cure any default of any promise or agreement;
- c. You are paid all expenses allowed by Applicable Law, including reasonable attorneys' fees and other fees incurred for the purpose of protecting your interest in the Property and rights under the Loan Agreement;
- d. I comply with any reasonable requirement to assure you that your interest in the Property will remain intact; and
- e. I comply with any reasonable requirement to assure you that my ability to pay what I owe will remain intact.

You may require me to pay for the reinstatement in one or more of the following forms:

- a. cash;
- b. money order;

- c. certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are federally insured; or
- d. Electronic Funds Transfer.

Upon reinstatement, the Loan Agreement will remain effective as if no acceleration had occurred. However, this right to reinstate will not apply if I sell or transfer any interest in the Property without your permission.

SALE OF NOTE, CHANGE OF LOAN SERVICER, NOTICE OF GRIEVANCE, LENDER'S RIGHT TO COMPLY

A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA.

Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section.

No agreement between you and me or any third party will limit your ability to comply with your duties under the Loan Agreement and the Applicable Law.

You and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law.

You and I intend to conform the Loan Agreement to the provisions of Applicable Law. If any part of the Loan Agreement is in conflict with the Applicable Law, then that part will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Your right to correct any violation will survive my paying off the Loan Agreement. My right to correct will override any conflicting provision of the Loan Agreement.

Your right to comply as provided in this Section will survive the payoff of the Loan Agreement. The provisions of this Section will supersede any inconsistent provision of the Loan Agreement.

HAZARDOUS SUBSTANCES

Hazardous Substances:

- a. "Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials;
- b. "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection;
- c. "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and
- d. "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. I will not do, or allow anyone else to do, anything affecting the Property:

- a. that is in violation of any Environmental Law;
- b. that creates an Environmental Condition; or
- c. that, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property.

The presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and for the maintenance of the Property are allowed. This includes Hazardous Substances found in consumer products.

I will promptly give you written notice of:

- a. any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which I have actual knowledge;
- b. any Environmental Condition, including any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and
- c. any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property.

If I learn that, or am notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, I promptly will take all necessary remedial actions in accordance with Environmental Law. You will have no obligation for an Environmental Cleanup.

ACCELERATION AND REMEDIES

You will give me notice prior to acceleration if I am in default under the Loan Agreement. The notice will specify:

- a. the default;
- b. the action required to cure the default;
- c. a date, not less than 21 days from the date you give me notice, to cure the default; and
- d. that my failure to cure the default on or before the specified date will result in acceleration of all that I owe under the Loan Agreement and sale of the Property.

You will inform me of my right to reinstate after acceleration. If the default is not cured before the specified date, you have the option to require immediate payment in full of all I owe. If you are not paid all I owe, you may sell the Property or seek other remedies allowed by Applicable Law without further notice. You may collect your reasonable expenses incurred in seeking the remedies provided in this Section. These expenses may include court costs, attorneys' fees, and costs of title search.

I understand the power of sale is not a confession of judgment or a power of attorney to confess judgment or an appearance by me in a judicial proceeding. If the Property is sold under this Section I or my successors will immediately give possession of the Property to the purchaser. If I do not, I or anyone residing on the Property may be removed by writ of possession.

ASSIGNMENT OF RENTS, APPOINTMENT OF RECEIVER, LENDER IN POSSESSION

As additional security, I assign to you the rents of the Property, provided that I have the right, prior to acceleration or abandonment of the Property, to collect and retain the rents as they become due.

Upon acceleration or abandonment, you, by agent or by court-appointed receiver, will be entitled to enter, take possession, manage the Property, and collect due and past due rents. All rents you or the court-appointed receiver collect will be applied first to payment of the costs of management of the Property and collection of rents, including receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Security Document. You and the receiver will be liable to account only for rents received.

POWER OF SALE

You have a fully enforceable lien on the Property. Your remedies for my default include an efficient means of foreclosure under the law. You and the Trustee have all powers to conduct a foreclosure. If you choose to use the power of sale, you will give me notice of the time, place and terms of the sale by posting and filing notice at least 21 days before the sale as provided by law. You will give me notice by mail as required by law. Failure to cure default on or before the date in the notice may result in acceleration of the amount that I owe under this Loan Agreement. The notice will inform me of my right to reinstate after acceleration and assert in court that I am not in default or any other defense to acceleration or sale. If I do not cure the default on or before the date in the notice, you, at your option, may declare all that I owe under this Loan Agreement to be immediately due and payable and may invoke the power of sale and any other remedies permitted by Applicable Law. The sale will be conducted at a public place. The sale will be held:

- a. on the first Tuesday of a month;
- b. at a time stated in the notice or no later than 3 hours after the time; and
- c. between 10:00 a.m. and 4:00 p.m.

I allow the Trustee to sell the Property to the highest bidder for cash in one or more pieces and in any order the Trustee determines. You may purchase the Property at any sale.

Trustee will give a Trustee's deed to the foreclosure sale purchaser. A Trustee's deed will convey:

- a. good title to the Property; and
- b. title with promises of general warranty from me.

I will defend the purchaser's title to the Property against all claims and demands. The description of facts contained in the Trustee's deed will be sufficient to legally prove the truth of the statements made in the deed. Trustee will apply the proceeds of the sale in the following order:

- a. to all expenses of the sale, including court costs and reasonable Trustee's and attorneys' fees;
- b. what I owe; and
- c. any excess to the person or persons legally entitled to it.

If the Property is sold through a foreclosure sale governed by this Section, I or any person in possession of the Property through me, will give up possession of the Property without delay. A person who does not give up possession is a holdover and may be removed by a court order.

RELEASE

Upon payment of all that I owe under this Loan Agreement, you will cancel and return the Note to me and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the lien to a lender that is refinancing the Loan Agreement. If you cannot, you will provide me with a discharge and release of all obligation under the loan. I will pay only the cost of recording the release of lien.

LENDER'S RIGHTS AND BORROWER'S RESPONSIBILITIES

You are entitled to all rights, superior title, liens and equities owned or claimed by any grantor or holder of any liens and debts due before the signing of the Loan Agreement. You may acquire these rights by assignment or the holder may release them upon payment.

Each person who signs the Security Document is responsible for each promise and duty in the Security Document.

Unless prohibited by Applicable Law, this Section will not:

- a. impair in any way the Loan Agreement or your right to collect all that I owe under the Loan Agreement; or
- b. affect your right to any promise or condition of the Loan Agreement.

TRUSTEES AND TRUSTEE LIABILITY

One or more Trustees acting alone or together may exercise or perform all rights, remedies and duties of the Trustee under the Loan Agreement. You may remove or change any Trustee (e.g., add one or more Trustees or appoint a successor Trustee to any Trustee). This removal or change of Trustee must be in writing and may be:

- a. at your option;
- b. with or without cause; and
- c. by power of attorney or otherwise.

The substitute, additional or successor Trustee will receive, the title, rights, remedies, powers and duties under the Loan Agreement and Applicable Law.

Trustee may rely upon any notice, request, consent, demand, statement or other document reasonably believed by Trustee to be valid. Trustee will not be liable for any act or omission unless the act or omission is willful.

DEFAULT

Any default of my agreements with you will be a default of this Security Document.

SUBROGATION

If I ask, you will use proceeds from the Loan Agreement to pay off all valid outstanding liens against the Property. You will then own all rights, superior titles, liens, and interests owned or claimed by any owner or holder of an outstanding lien or debt. You own these things whether the lien or debt is transferred to you or whether it is released by the holder upon payment.

PARTIAL INVALIDITY

If any portion of the sums secured by this Security Document cannot be lawfully secured, payments minus those sums will be applied first to the portions not secured. If any charge provided for in this Loan Agreement, separately or together with other charges that are considered part of this Loan Agreement, violates Applicable Law, the charge is reduced to the extent necessary to eliminate the violation. Lender will refund the amount of interest or other charges paid to Lender in excess of the amount permitted by Applicable Law. At Lender's option, the amount in excess will either be refunded directly to me or will be applied to reduce the principal of the debt.

**REQUEST FOR NOTICE OF DEFAULT
 AND FORECLOSURE UNDER SUPERIOR
 MORTGAGES OR SECURITY DOCUMENTS**

You and I request that the holder of any mortgage, security document or other claim with a lien that has priority over this Security Document give you Notice, at your address listed on page 1 of this Security Document, of any default under the superior claim and of any sale or other foreclosure action.

BY SIGNING BELOW, I accept and agree to the terms and promises contained in the Loan Agreement and in any Rider I sign which is recorded with it. (DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. I MUST RECEIVE A COPY OF ANY DOCUMENT I SIGN.)

_____ (seal)
 -Borrower

Printed Name: _____
(Please Complete)

_____ (seal)
 -Borrower

Printed Name: _____
(Please Complete)

_____ (seal)
 -Borrower

_____ (seal)
 -Borrower

STATE OF TEXAS
County of _____

Before me, a notary public, on this day personally appeared _____, known to me (or proved to me on the oath of _____ or through _____) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that _____ executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 20__.

(Seal)

Notary Public

Figure: 7 TAC §90.603(c)(1)(B) [~~§90.603(e)(1)~~]

"CREDITOR/LENDER _____
 CREDITOR/LENDER NMLS ID _____
 LOAN ORIGINATOR _____
 LOAN ORIGINATOR NMLS ID _____
 ADDRESS (include county) _____

DATE OF NOTE _____
 ACCOUNT/CONTRACT NO. _____
 BORROWER _____
 ADDRESS (include county) _____

PROPERTY ADDRESS: (include county) _____

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

Principal Amount: \$ _____

Terms of Payment (principal and interest) _____ "

Figure: 7 TAC §90.603(c)(4)(C)

My Payment Schedule will be:

<u>Number of Payments</u>	<u>Amount of Payments</u>	<u>When Payments Are Due</u>

Figure: 7 TAC §90.603(c)(8)(A) [~~§90.603(e)(10)(A)~~]

"The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I will not have to pay a penalty, and I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this loan agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe."

Figure: 7 TAC §90.603(c)(8)(B) [~~§90.603(e)(10)(B)~~]

"The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. The unpaid cash advance does not include the administrative fee, late charges, or returned check charges. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this loan agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe."

Figure: 7 TAC §90.603(c)(8)(C) [~~§90.603(e)(10)(C)~~]

"The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment. I may prepay my loan in full early without paying a penalty.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this loan agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any other charges I owe."

Figure: 7 TAC §90.603(c)(11) [~~§90.603(e)(13)~~]

"I will be in default if:

- a. I do not timely make a payment to the person or place you direct;
- b. I break any promise I made in the loan agreement;
- c. I allow a lien to be entered against the Property unless you agree in writing;
- d. I sell, lease, or dispose of the Property;
- e. I use the Property for an illegal purpose; or
- f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default."

Figure: 7 TAC §90.603(c)(12) [§90.603(e)(14)]

PROPERTY INSURANCE: I must keep the Property insured against damage or loss in at least the amount I owe. 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.

If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.

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. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. You will insure the Property for the lesser amount of the value of the Property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

Property Insurance \$ _____ Term _____

Figure: 7 TAC §90.603(c)(13) [§90.603(e)(15)]

"Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

Credit Life, one borrower \$ _____ Credit Life, both borrowers \$ _____ Term _____

Credit Disability, one borrower \$ _____ Credit Disability, both borrowers \$ _____ Term _____

If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

Premium Due with the First Month's <u>Loan Payment</u>	First Year <u>Premium</u>	Insurance <u>Type</u>	_____ Borrower's Signature	_____ Date
\$ _____	\$ _____			
\$ _____	\$ _____			
\$ _____	\$ _____		_____ Co-Borrower's Signature	_____ Date

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

- (1) your receipt of my written request for cancellation;
- (2) cancellation under the insurance certificate or policy;
- (3) payment in full of my loan; or
- (4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium."

Figure: 7 TAC §90.603(c)(27) [~~§90.603(e)(29)~~]

"Do not sign if there are blanks left to be completed in this document.

I must receive a copy of this document after I have signed it. I agree to the terms of this loan agreement.

_____ (Seal)

-Borrower

____ (Seal)

Borrower

_____ (Seal)

-Borrower

____ (Seal)

Borrower

(Sign Original Only)

(Option for witness signatures)"

Figure: 7 TAC §90.603(e)(1)(B) [~~§90.603(e)(1)~~]

"CREDITOR/LENDER _____
 CREDITOR/LENDER NMLS ID _____
 LOAN ORIGINATOR _____
 LOAN ORIGINATOR NMLS ID _____
 ADDRESS (include county) _____

DATE OF NOTE _____
 ACCOUNT/CONTRACT NO. _____
 BORROWER _____
 ADDRESS (include county) _____

PROPERTY ADDRESS: (include county) _____

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

Principal Amount: _____

Terms of Payment (principal and interest): _____"

Figure: 7 TAC §90.603(e)(4)(C)

My Payment Schedule will be:

<u>Number of Payments</u>	<u>Amount of Payments</u>	<u>When Payments Are Due</u>

Figure: 7 TAC §90.603(e)(8)(A) [~~§90.603(e)(10)(A)~~]

"The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I will not have to pay a penalty, and I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe."

Figure: 7 TAC §90.603(e)(8)(B) [~~§90.603(e)(10)(B)~~]

"The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. The unpaid cash advance does not include the administrative fee, late charges, or returned check charges. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe."

Figure: 7 TAC §90.603(e)(8)(C) [~~§90.603(e)(10)(C)~~]

"The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment. I may prepay my loan in full early without paying a penalty.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any other charges I owe."

Figure: 7 TAC §90.603(e)(11) [§90.603(e)(13)]

"I will be in default if:

- a. I do not timely make a payment to the person or place you direct;
- b. I break any promise I made in the Loan Agreement;
- c. I allow a lien to be entered against the Property unless you agree in writing;
- d. I sell, lease, or dispose of the Property;
- e. I use the Property for an illegal purpose; or
- f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the Loan Agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default."

Figure: 7 TAC §90.603(e)(12) [§90.603(e)(14)]

PROPERTY INSURANCE: I must keep the Property insured against damage or loss in at least the amount I owe. 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.

If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.

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. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. You will insure the Property for the lesser amount of the value of the Property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

Property Insurance \$ _____ Term _____

Figure: 7 TAC §90.603(e)(13) [~~§90.603(e)(15)~~]

"Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

Credit Life, one borrower \$ _____ Credit Life, both borrowers \$ _____ Term _____
 Credit Disability, one borrower \$ _____ Credit Disability, both borrowers \$ _____ Term _____

If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

Premium Due with the First Month's <u>Loan Payment</u>	First Year <u>Premium</u>	Insurance <u>Type</u>	_____	Borrower's Signature	_____	Date
\$	\$					
\$	\$					
\$	\$			_____	Co- Borrower's Signature	_____
						Date

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

- (1) your receipt of my written request for cancellation;
- (2) cancellation under the insurance certificate or policy;
- (3) payment in full of my loan; or
- (4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium."

Figure: 7 TAC §90.603(e)(28) [~~§90.603(e)(30)~~]

"Do not sign if there are blanks left to be completed in this document.

I must receive a copy of this document after I have signed it. I agree to the terms of this Loan Agreement.

_____(Seal)

-Borrower

____(Seal)

Borrower

_____(Seal)

-Borrower

Borrower

____(Seal)

(Sign Original Only)

(Option for witness signatures)"

Figure: ~~§90.604(a)(13)~~ [§90.604(a)(12)]

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

TEXAS HOME IMPROVEMENT MECHANIC'S LIEN CONTRACT FOR IMPROVEMENT AND POWER OF SALE (Second Lien)

DATE _____
ACCOUNT/CONTRACT NO. _____

DEFINITIONS

- (A) "Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker. "I" or "me" means the Owner.
- (B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies. "You" or "your" means the Contractor.
- (C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies. The Lender's NMLS ID is (NMLS ID of Lender). The loan originator's name is (name of loan originator with primary responsibility for the origination). The loan originator's NMLS ID is (NMLS ID of originator).
- (D) "Trustee" means (name of Trustee), whose address is (address of Trustee, including county).
- (E) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).
- (F) "Work" means the construction project as agreed to in writing between the Owner and Contractor.
- (G) "Completion Date" means (date on which the Work will be completed).
- (H) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement and Power of Sale.

CONSTRUCTION OF IMPROVEMENTS

You agree to furnish and pay for all labor and material needed to complete the Work within _____ days from the date of this Contract. The Work will be performed on the Property in a good and workmanlike manner.

CONTRACT PRICE

I agree to pay, or cause to be paid, to you, or to your order, the sum of _____ dollars (U.S. \$ _____) when the Work is completed.

TRANSFER OF LIEN

You transfer to Lender all of your rights and interests in this Contract.

COMPLETION BY CONTRACTOR, BUT NOT LENDER

You will complete the Work by the Completion Date. Lender is not responsible for completing the Work. Lender is not a guarantor of your performance. You will indemnify and hold Lender harmless against all claims related to the Work.

PARTIAL LIEN

If you do not complete the Work by the Completion Date in a good and workmanlike manner, then Lender will have a valid lien for the contract price, less the amount reasonably necessary to complete the Work. As an alternative, Lender may choose to complete the Work and the lien will be valid for the contract price.

CHANGES AND EXTRAS

All labor or material furnished outside of this Contract must be agreed upon in writing or it will be considered as performed under the original Contract and you will receive no extra money.

RECEIPTS AND RELEASES

If I ask, you will give me valid receipts and releases for the Work from any subcontractor, worker, and supplier.

NO WORK COMMENCED

This Contract is executed, acknowledged, and delivered before any labor has been performed and any material has been furnished for the Work.

TRUSTEE'S DUTIES

If you ask Trustee to foreclose this lien, Trustee will:

1. give notice of the foreclosure sale as required by the Texas Property Code;
2. sell and grant all or part of the Property "AS IS":
 - a. to the highest bidder for cash;
 - b. subject to prior liens and exceptions to conveyance and warranty; and
 - c. without representation or warranty;
3. pay the proceeds of the sale, in this order:
 - a. expenses of foreclosure, including Trustee's reasonable fee;
 - b. the unpaid amount of principal, interest, attorneys' fees, and other charges due you;
 - c. any amount required by law to be paid; and
 - d. any balance to me; and
4. be indemnified by you for all costs, expenses, and liabilities incurred by Trustee in performance of Trustee's duties under this Contract.

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.

Note: The following notice complies with Texas Property Code §41.007. In this notice, the terms "you" and "your" refer to the Owner.

IMPORTANT NOTICE: YOU AND YOUR CONTRACTOR ARE RESPONSIBLE FOR MEETING THE TERMS AND CONDITIONS OF THIS CONTRACT. IF YOU SIGN THIS CONTRACT AND YOU FAIL TO MEET THE TERMS AND CONDITIONS OF THIS CONTRACT, YOU MAY LOSE YOUR LEGAL OWNERSHIP RIGHTS IN YOUR HOME. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW.

Owner

Owner

Contractor

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by __ (name of owner) _____.

Notary Public

(Seal)

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by __ (name of contractor) _____.

Notary Public

(Seal)

ASSIGNMENT

This lien is transferred and assigned to __ (third party lender) _____.

Contractor

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by __ (name of contractor) _____.

Notary Public

(Seal)

Mechanic's Lien Note (Second Lien- Home Improvement)

CREDITOR/LENDER _____
 CREDITOR/LENDER NMLS ID _____
 LOAN ORIGINATOR _____
 LOAN ORIGINATOR NMLS ID _____
 ADDRESS (include county) _____

DATE OF NOTE _____
 ACCOUNT/CONTRACT NO. _____
 BORROWER _____
 ADDRESS (include county) _____

PROPERTY ADDRESS: (include county) _____

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

Principal Amount: _____

Terms of Payment (principal and interest): _____

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. _____ \$
My Payment Schedule will be:			
Number of Payments	Amount of Payments	When Payments Are Due	

Security: You will have a security interest in the following described property: (property description) _____
Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.
Prepayment (Scheduled Installment Earnings Method): If I pay off early, I may be entitled to a refund of part of the Finance Charge. I will not have to pay a penalty. (**True Daily Earnings Method:** If I pay off early, I will not have to pay a penalty.
Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

SECURITY FOR PAYMENT

Liens created in the Contract secure this Note. You will have a security interest in the following described property:
 (property description) _____

DEFINITIONS

- (A) "Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker.
- (B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies.
- (C) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement and Power of Sale dated _____ between Contractor and Owner.

(D) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).

(E) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe you is _____ dollars (U.S. \$ _____) plus interest. I have promised to pay this debt in regular periodic payments and to pay the debt in full not later than _____.

BORROWER'S PROMISE TO PAY

Scheduled Installment Earnings Method:

I promise to pay the Total of Payments to the order of you. The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

True Daily Earnings Method:

I promise to pay the cash advance plus the accrued interest to the order of you. The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

LATE CHARGE

General Late Charge: If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment. High-Cost Mortgage Loan Late Charge: If I don't pay all of a payment within 15 days after it is due, you can charge me a late charge. The late charge will be 4% of the amount of the payment past due.

AFTER MATURITY INTEREST

If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

PREPAYMENT

Scheduled Installment Earnings Method: I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

True Daily Earnings Method: I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

FINANCE CHARGE AND REFUND METHOD

For contracts using Scheduled Installment Earnings Method - Section 342.301 rate loans: The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I will not have to pay a penalty, and I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this loan agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using Scheduled Installment Earnings Method with prepayments option - Section 342.301 rate loans: The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. The unpaid cash advance does not include the administrative fee, late charges, or returned check charges. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this loan agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using True Daily Earnings Method - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment. I may prepay my loan in full early without paying a penalty.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this loan agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any other charges I owe.

DEFERMENT

If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules.

FEE FOR DISHONORED CHECK

I agree to pay you a fee of up to \$30 for a returned check. You may add the fee to the amount I owe or collect it separately.

DEFAULT

I will be in default if:

- a. I do not timely make a payment to the person or place you direct;
- b. I break any promise I made in the loan agreement;
- c. I allow a lien to be entered against the Property unless you agree in writing;
- d. I sell, lease, or dispose of the Property;
- e. I use the Property for an illegal purpose, or
- f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default.

PROPERTY INSURANCE

PROPERTY INSURANCE: I must keep the Property insured against damage or loss in at least the amount I owe. 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.

If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.

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. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. You will insure the Property for the lesser amount of the value of the Property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

Property Insurance \$ _____ Term _____

CREDIT INSURANCE

Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

Credit Life, one borrower \$ _____ Credit Life, both borrowers \$ _____ Term _____
Credit Disability, one borrower \$ _____ Credit Disability, both borrowers \$ _____ Term _____

If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

			_____ Borrower's Signature	_____ Date
Premium Due with the First Month's Loan Payment	First Year Premium	Insurance Type:		
\$ _____	\$ _____			
\$ _____	\$ _____			
\$ _____	\$ _____			
			_____ Co-Borrower's Signature	_____ Date

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

- (1) your receipt of my written request for cancellation;
- (2) cancellation under the insurance certificate or policy;
- (3) payment in full of my loan; or
- (4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium.

MAILING OF NOTICES TO BORROWER

You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it.

STATEMENT OF TRUTHFUL INFORMATION

I promise that all information I gave you is true.

DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the Property is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this loan agreement. You will not exercise this option if prohibited by law.

If you exercise this option, you will give me notice that you are demanding payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this loan agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the loan agreement.

NO WAIVER OF LENDER'S RIGHTS

If you don't enforce your rights every time, you can still enforce them later.

COLLECTION EXPENSES

If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this loan agreement to the extent not prohibited by applicable law. These expenses include, for example, reasonable attorneys' fees.

JOINT LIABILITY

I understand that you may seek payment from only me without first looking to any other Borrower.

USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than applicable law allows.

SAVINGS CLAUSE

If any part of this loan agreement is declared invalid, the rest of the loan agreement remains valid. If any part of this loan agreement conflicts with any law, that law will control. The part of the loan agreement that conflicts with any law will be modified to comply with the law. The rest of the loan agreement remains valid.

PRIOR AGREEMENTS

This written loan agreement is the final agreement between you and me. It may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this loan agreement. Any change to this loan agreement must be in writing. Both you and I have to sign written agreements.

APPLICATION OF LAW

Federal law and Texas law apply to this loan agreement.

OCCC [COMPLAINTS AND INQUIRIES] NOTICE

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov.

[The (name of lender or note holder) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (name of lender or note holder) should contact the Office of Consumer Credit Commissioner through one of the means indicated below:]

[Office of Consumer Credit Commissioner]
[2601 North Lamar Boulevard, Austin, Texas 78705-4207]
[www.occc.state.tx.us]
[(800) 538-1579]

COLLATERAL

The Property is subject to the Contract lien.

I am responsible for all obligations in this Note.

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.

Do not sign if there are blanks left to be completed in this document.

I must receive a copy of this document after I have signed it. I agree to the terms of this loan agreement.

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

(Sign Original Only)

(Option for witness signatures)

Figure: §90.604(a)(15) [~~§90.604(a)(14)~~]

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

TEXAS HOME IMPROVEMENT MECHANIC'S LIEN CONTRACT FOR IMPROVEMENT, POWER OF SALE, AND DEED OF TRUST (Second Lien)

DATE _____
ACCOUNT/CONTRACT NO. _____

DEFINITIONS

- (A) "Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker. "I" or "me" means the Owner.
- (B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies. "You" or "your" means the Contractor.
- (C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies. The Lender's NMLS ID is (NMLS ID of Lender). The loan originator's name is (name of loan originator with primary responsibility for the origination). The loan originator's NMLS ID is (NMLS ID of originator).
- (D) "Trustee" means (name of Trustee), whose address is (address of Trustee, including county).
- (E) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).
- (F) "Work" means the construction project as agreed to in writing between the Owner and Contractor.
- (G) "Completion Date" means (date on which the Work will be completed).
- (H) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement, Power of Sale, and Deed of Trust.
- (I) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe you is _____ dollars (U.S. \$ _____) plus interest.
- (J) "Loan Agreement" means the Note, Contract, and any other related document under which Lender has made a loan to me.
- (K) "Applicable Law" means all controlling applicable federal, state, and local law.
- (L) "Tenant at Sufferance" means a person who continues to possess the Property with no current right to possess it.
- (M) "Forcible Detainer" means a lawsuit to remove a person from the Property.
- (N) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amount under this Contract.
- (O) "Successor in Interest" means any party that has taken title to the Property.
- (P) "Lien" means the Mechanic's and Materialman's Lien on the Property that results from the Contract and the Work performed. The Lien includes all existing and future improvements, easements, and rights in the Property.

CONSTRUCTION OF IMPROVEMENTS

You agree to furnish and pay for all labor and material needed to complete the Work within _____ days from the date of this Contract. The Work will be performed on the Property in a good and workmanlike manner.

CONTRACT PRICE

I agree to pay, or cause to be paid, to you, or to your order, the sum of _____ dollars (U.S. \$ _____) when the Work is completed.

NOTE PAYABLE TO LENDER

In exchange for money from the Lender to you, I have signed a Note to the Lender in the amount of _____dollars (U.S. \$ _____).

LIEN TO SECURE NOTE

To secure the amounts Lender provides to you, and the interest payable to Lender, I give you, and you transfer to Lender, the Lien. The Note is secured by a deed of trust, which I will sign. The deed of trust will renew and extend the Lien created by this Contract.

TRANSFER OF LIEN

You transfer to Lender all of your rights and interests in this Contract.

EXCEPTIONS TO CONVEYANCE AND WARRANTY

The exceptions to conveyance and warranty are:

(List any exceptions to conveyance and warranty.)

COMPLETION BY CONTRACTOR, BUT NOT LENDER

You will complete the Work by the Completion Date. Lender is not responsible for completing the Work. Lender is not a guarantor of your performance. You will indemnify and hold Lender harmless against all claims related to the Work.

PARTIAL LIEN

If you do not complete the Work by the Completion Date in a good and workmanlike manner, then Lender will have a valid lien for the contract price, less the amount reasonably necessary to complete the Work. As an alternative, Lender may choose to complete the Work and the lien will be valid for the contract price.

CHANGES AND EXTRAS

All labor or material furnished outside of this Contract must be agreed upon in writing or it will be considered as performed under the original Contract and you will receive no extra money.

RECEIPTS AND RELEASES

If I ask, you will give me valid receipts and releases for the Work from any subcontractor, worker, and supplier.

NO WORK COMMENCED

This Contract is executed, acknowledged, and delivered before any labor has been performed and any material has been furnished for the Work.

OWNER'S PROMISES AND RIGHTS

I promise that:

- 1. I own the Property in "fee simple," subject to the section in this Contract named "Exceptions to Conveyance and Warranty"; and
- 2. I will provide notice to Lender if I learn of a lien or claim for labor or material on the Property that relates to the Contract.

You agree that I have the following rights:

- 1. Despite anything to the contrary in this Contract, Lender may keep all amounts under sections 53.101 and 53.081 of the Texas Property Code until thirty days after the Work is completed;
- 2. I may deduct enough money from payments on the Note to the Lender to pay a lien or claim for labor or material provided to you that you are obligated to pay. I will still owe the amount in the Note; and
- 3. Without affecting the lien created by this Contract, I may use insurance proceeds to restore destroyed or damaged property for a loss occurring before the Work is completed.

OWNER'S DUTIES

I agree to:

1. pay timely all taxes and assessments on the Property;
2. preserve the lien's priority as it is established in this Contract;
3. pay all prior lien notes that I am responsible to pay and abide by all prior lien instruments;
4. because this Contract is for improvements to the Property, keep the Property other than those improvements in good repair and condition during the Work;
5. except to the extent that you are required to insure the Work during its progress, keep at my cost and expense, and in a form acceptable to you or your transferees, insurance policies having the following coverages issued by an insurance company or companies authorized to engage in the insurance business in Texas with a financial rating acceptable to you or your transferees:
 - a. property insurance covering all improvements located on the Property in an amount not more than the actual amount of unpaid debt or the amount of their full replacement cost, whichever is less, containing a standard mortgage clause, provided that the amounts of coverage meet all coinsurance requirements of the policy;
 - b. flood insurance, if the property is located in a flood hazard area; and
 - c. any other insurance coverage that you or your transferees may reasonably require;
6. deliver the insurance policy to you within ten days of the date of the Contract and deliver renewals to you at least fifteen days before expiration;
7. I MAY PROVIDE THE INSURANCE REQUIRED OF ME BY THIS CONTRACT EITHER THROUGH EXISTING POLICIES OWNED OR CONTROLLED BY ME OR THROUGH LIKE COVERAGE FROM ANY INSURANCE COMPANY AUTHORIZED TO TRANSACT BUSINESS IN TEXAS;
8. comply with all laws, ordinances, and restrictive covenants applicable to the Property; and
9. keep any buildings occupied as required by the insurance policy.

CONTRACTOR'S DUTIES

You agree that:

1. Until the Work is completed, you will insure the Work against loss or damage. You will insure the Work in the amount of any unpaid debt or the full replacement cost, whichever is less. The parties to this Contract will be beneficiaries of this insurance according to their respective interests. If you do not provide this insurance, you will bear any loss to the Work.
2. If any other lien or claim is filed against the Property, you will pay for its removal or provide a statutory bond.

CONTRACTOR'S RIGHTS

You have the following rights:

1. You may appoint in writing a substitute Trustee.
2. After completing the Work, you may apply any insurance proceeds to either (a) reduce the Note or (b) repair or replace damaged or destroyed improvements.
3. If I fail to carry out any of my duties other than providing insurance, you may carry out the duty. On demand, I will repay you for any amount paid. This amount will include attorneys' fees to an attorney who is not your employee. I will also pay you interest at the contract rate in the Note. If I repay you after the full Note amount is due, I will repay you the after maturity interest rate in the Note. Any amount to be repaid will be secured by this Contract.
4. If I default on the Note or this Lien is foreclosed, I will repay you for reasonable fees to an attorney who is not your employee. I will also repay you for court, collection, and foreclosure costs. The amount to be repaid will be secured by this Contract.
5. After notice of default plus twenty-one days, you may:
 - a. declare the unpaid principal balance and earned interest on the Note immediately due;
 - b. ask Trustee to foreclose this Lien and to give notice of the foreclosure sale under the Texas Property Code; and
 - c. buy the Property at any foreclosure sale and then credit the amount of the bid on the Note.

Notice of default is given when deposited with the United States Postal Service (certified mail, return receipt requested), addressed to me at my current mailing address or, if my current mailing address is unknown, to my last known address as shown in the records of the holder of the debt.

TRUSTEE'S DUTIES

If you ask Trustee to foreclose this lien, Trustee will:

1. give notice of the foreclosure sale as required by the Texas Property Code;
2. sell and grant all or part of the Property "AS IS":
 - a. to the highest bidder for cash;
 - b. subject to prior liens and exceptions to conveyance and warranty; and
 - c. without representation or warranty;
3. pay the proceeds of the sale, in this order:
 - a. expenses of foreclosure, including Trustee's reasonable fee;
 - b. the unpaid amount of principal, interest, attorneys' fees, and other charges due you;
 - c. any amount required by law to be paid; and
 - d. any balance to me; and
4. be indemnified by you for all costs, expenses, and liabilities incurred by Trustee in performance of Trustee's duties under this Contract.

GENERAL PROVISIONS

1. If you are dismissed from the Work, or you do not complete the Work, the Note amount will be reduced by the amount reasonably necessary to complete the Work. If you are not the Note holder, the holder may complete the Work.
2. This Contract is executed, acknowledged, and delivered before any labor has been performed or any material has been furnished for the Work. This Contract is entered into by all Owners with the consent of each Owner's spouse.
3. If any of the Property is sold under this Contract, I will immediately move from the Property. If I fail to do so, I will become a Tenant at Sufferance of the purchaser, subject to Forcible Detainer.
4. Statements in any Trustee's deed conveying the Property are assumed to be true.
5. The Lien is prior to liens created later, even if the Note is extended or part of the Property is released.
6. Payments will be applied first to satisfy any portion of the Note that is not secured by this Contract.
7. I transfer to you all condemnation proceeds. I also transfer to you all proceeds from a private sale in lieu of condemnation. I further transfer to you all damages caused by public works on or near the Property. After deducting any expenses, including attorneys' fees and court and other lawful costs, you will either release any remaining amounts to me or apply them to reduce the Note. I will immediately give you notice of any actual or threatened proceeding for a taking of all or part of the Property.
8. You do not elect remedies by continuing under this Contract, beginning foreclosure, or pursuing any other remedy.
9. As additional security, I assign to you the rents of the Property, provided that you have the right, prior to acceleration or abandonment of the Property, to collect and retain the rents as they become due. Upon acceleration or abandonment, you, by agent or by court-appointed receiver, will be entitled to enter, take possession, manage the Property, and collect due and past due rents. All rents you or the court-appointed receiver collect will be applied first to payment of the costs of management of the Property and collection of rents, including receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Security Document. You and the receiver will be liable to account only for rents received.
10. I do not have to pay interest or other amounts that are more than Applicable Law allows.
11. Where appropriate, singular nouns and pronouns include the plural.
12. The word "may" gives sole discretion without imposing any duty to take action.

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.

Note: The following notice complies with Texas Property Code §41.007. In this notice, the terms "you" and "your" refer to the Owner.

IMPORTANT NOTICE: YOU AND YOUR CONTRACTOR ARE RESPONSIBLE FOR MEETING THE TERMS AND CONDITIONS OF THIS CONTRACT. IF YOU SIGN THIS CONTRACT AND YOU FAIL TO MEET THE TERMS AND CONDITIONS OF THIS CONTRACT, YOU MAY LOSE YOUR LEGAL OWNERSHIP RIGHTS IN YOUR HOME. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW.

Owner

Owner

Contractor

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by (name of owner)_____.

Notary Public

(Seal)

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by (name of contractor)_____.

Notary Public

(Seal)

ASSIGNMENT

This lien is transferred and assigned to (third party lender) _____.

Contractor

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by (name of contractor) _____.

Notary Public

(Seal)

Mechanic's Lien Note (Second Lien- Home Improvement)

CREDITOR/LENDER _____
 CREDITOR/LENDER NMLS ID _____
 LOAN ORIGINATOR _____
 LOAN ORIGINATOR NMLS ID _____
 ADDRESS (include county) _____

DATE OF NOTE _____
 ACCOUNT/CONTRACT NO. _____
 BORROWER _____
 ADDRESS (include county) _____

PROPERTY ADDRESS: (include county) _____

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

Principal Amount: _____

Terms of Payment (principal and interest): _____

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.
%	\$	\$	\$
My Payment Schedule will be:			
Number of Payments	Amount of Payments	When Payments Are Due	
Security: You will have a security interest in the following described property: (property description) _____ Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment. Prepayment (Scheduled Installment Earnings Method): If I pay off early, I may be entitled to a refund of part of the Finance Charge. I will not have to pay a penalty. (True Daily Earnings Method): If I pay off early, I will not have to pay a penalty. Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.			

SECURITY FOR PAYMENT

The Deed of Trust and the Lien created in the Contract secure this Note. You will have a security interest in the following described property:
 (property description) _____

DEFINITIONS

- (A) "Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker.
- (B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies.
- (C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies.

- (D) "Trustee" means (name of Trustee), whose address is (address of Trustee, including county).
- (E) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).
- (F) "Work" means the construction project as agreed to in writing between the Owner and Contractor.
- (G) "Completion Date" means (date on which the Work will be completed).
- (H) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement, Power of Sale, and Deed of Trust.
- (I) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe you is _____ dollars (U.S. \$ _____) plus interest.
- (J) "Loan Agreement" means the Note, Contract, and any other related document under which Lender has made a loan to me.
- (K) "Applicable Law" means all controlling applicable federal, state, and local law.
- (L) "Tenant at Sufferance" means a person who continues to possess the Property with no current right to possess it.
- (M) "Forcible Detainer" means a lawsuit to remove a person from the Property.
- (N) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amount under this Contract.
- (O) "Successor in Interest" means any party that has taken title to the Property.
- (P) "Lien" means the Mechanic's and Materialman's Lien on the Property that results from the Contract and the Work performed. The Lien includes all existing and future improvements, easements, and rights in the Property.

BORROWER'S PROMISE TO PAY

Scheduled Installment Earnings Method: I promise to pay the Total of Payments to the order of you. The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

True Daily Earnings Method: I promise to pay the cash advance plus the accrued interest to the order of you. The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

LATE CHARGE

General Late Charge: If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment. High-Cost Mortgage Loan Late Charge: If I don't pay all of a payment within 15 days after it is due, you can charge me a late charge. The late charge will be 4% of the amount of the payment past due.

AFTER MATURITY INTEREST

If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

PREPAYMENT

Scheduled Installment Earnings Method: I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

True Daily Earnings Method: I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

FINANCE CHARGE AND REFUND METHOD

For contracts using Scheduled Installment Earnings Method - Section 342.301 rate loans: The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I will not have to pay a penalty, and I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using Scheduled Installment Earnings Method with prepayments option - Section 342.301 rate loans: The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. The unpaid cash advance does not include the administrative fee, late charges, or returned check charges. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using True Daily Earnings Method - Section 342.301 rate loans: The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment. I may prepay my loan in full early without paying a penalty.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any other charges I owe.

DEFERMENT

If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules.

FEE FOR DISHONORED CHECK

I agree to pay you a fee of up to \$30 for a returned check. You may add the fee to the amount I owe or collect it separately.

DEFAULT

I will be in default if:

- a. I do not timely make a payment to the person or place you direct;
- b. I break any promise I made in the Loan Agreement;
- c. I allow a lien to be entered against the Property unless you agree in writing;
- d. I sell, lease, or dispose of the Property;
- e. I use the Property for an illegal purpose; or
- f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the Loan Agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default.

PROPERTY INSURANCE

PROPERTY INSURANCE: I must keep the Property insured against damage or loss in at least the amount I owe. 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.

If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.

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. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. You will insure the Property for the lesser amount of the value of the Property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

Property Insurance \$ _____ Term _____

CREDIT INSURANCE

Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

Credit Life, one borrower \$ _____ Credit Life, both borrowers \$ _____ Term _____
 Credit Disability, one borrower \$ _____ Credit Disability, both borrowers \$ _____ Term _____

If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

			_____ Borrower's Signature	_____ Date
Premium Due with the First Month's <u>Loan Payment</u>	<u>First Year</u> <u>Premium</u>	<u>Insurance</u> <u>Type:</u>		
\$	\$			
\$	\$			
\$	\$			
			_____ Co-Borrower's Signature	_____ Date

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

- (1) your receipt of my written request for cancellation;
- (2) cancellation under the insurance certificate or policy;
- (3) payment in full of my loan; or
- (4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium.

MAILING OF NOTICES TO BORROWER

You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it.

STATEMENT OF TRUTHFUL INFORMATION

I promise that all information I gave you is true.

DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the Property is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law.

If you exercise this option, you will give me notice that you are demanding payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement.

NO WAIVER OF LENDER'S RIGHTS

If you don't enforce your rights every time, you can still enforce them later.

COLLECTION EXPENSES

If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by Applicable Law. These expenses include, for example, reasonable attorneys' fees.

JOINT LIABILITY

I understand that you may seek payment from only me without first looking to any other Borrower.

USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than Applicable Law allows.

SAVINGS CLAUSE

If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with any law will be modified to comply with the law. The rest of the Loan Agreement remains valid.

PRIOR AGREEMENTS

This written Loan Agreement is the final agreement between you and me. It may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this Loan Agreement. Any change to this Loan Agreement must be in writing. Both you and I have to sign written agreements.

THIS NOTE SECURED BY A DEED OF TRUST

In addition to this Note, the Deed of Trust protects the Note holder from losses that might result if I do not keep the promises that I make in this Note. The Deed of Trust describes how and under what conditions I may have to make immediate payment of all that I owe under this Note.

APPLICATION OF LAW

Federal law and Texas law apply to this Loan Agreement.

OCCC [COMPLAINTS AND INQUIRIES] NOTICE

For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). The lender is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the lender, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: occc.texas.gov. E-mail: consumer.complaints@occc.texas.gov.

[The (name of lender or note holder) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (name of lender or note holder) should contact the Office of Consumer Credit Commissioner through one of the means indicated below:]

[Office of Consumer Credit Commissioner]
[2601 North Lamar Boulevard, Austin, Texas 78705-4207]
[www.occc.state.tx.us]
[(800) 538-1579]

COLLATERAL

The Property is subject to the Contract lien.

I am responsible for all obligations in this Note.

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.

Do not sign if there are blanks left to be completed in this document.

I must receive a copy of this document after I have signed it. I agree to the terms of this Loan Agreement.

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

(Sign Original Only)

(Option for witness signatures)

Figure: 7 TAC §90.604(a)(17) [§90.604(a)(16)]

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

**TEXAS HOME IMPROVEMENT
DEED OF TRUST
ASSIGNMENT OF CONTRACTOR'S LIEN
(Second Lien)**

DEFINITIONS

- (A) "Borrower" is _____ Borrower's address is _____
- (B) "Contractor" is _____ Contractor's address is _____
- (C) "Lender" is _____ Lender's address is _____
Lender's NMLS ID is _____ The loan originator's name is _____ The loan originator's NMLS ID is _____
- (D) "Trustee" is _____ Trustee's address is _____
- (E) "I" or "me" means _____, the grantor under this Deed of Trust and the person who signed the Note ("Borrower").
- (F) "Loan Agreement" means the Contract, Note, Security Document, Deed of Trust, any other related document, or any combination of those documents, under which Lender has made a loan to me.
- (G) "Deed of Trust" means this document, which is dated _____, together with all riders to this document.
- (H) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe Lender is _____ dollars (U.S. \$ _____) plus interest.
- (I) "Property" means the property at (list address of the Property), whose legal description is (list legal description of the Property).
- (J) "Applicable Law" means all controlling applicable federal, state, and local law.
- (K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or the Property by a condominium association, homeowners association, or similar organization.
- (L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
- (M) "Escrow Items" means those items that are described in Section ___ of this Deed of Trust.
- (N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: damage or destruction of the Property; condemnation or other taking of all or any part of the Property; conveyance instead of condemnation; or misrepresentations or omissions related to the value or condition of the Property.
- (O) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amounts under this Deed of Trust.
- (P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §§2601-2617 [~~§2601 et seq.~~]) and Regulation X (12 C.F.R. Part 1024) [~~(24 C.F.R. Part 3500)~~], as [~~they might be~~] amended [~~from time to time~~], or any additional or successor legislation or regulation that governs the same subject matter. As used in this Deed of Trust, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.
- (Q) "Successor in Interest" means any party that has taken title to the Property.
- (R) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Deed of Trust. Such an arrangement usually takes the form of a long-term "ground lease."
- (S) "Contract" means the Texas Home Improvement Mechanic's Lien Contract for Improvement, Power of Sale, and Deed of Trust.
- (T) "Lien" means the Mechanic's and Materialman's Lien on the Property that results from the Contract and the Work performed. The Lien includes all existing and future improvements, easements, and rights in the Property.

TRANSFER OF RIGHTS IN THE PROPERTY

I give the Property to Trustee to ensure Lender is repaid the debt evidenced by my Note dated _____ and any renewal or extension, to ensure Lender is repaid any sums (with interest) Lender advances to protect the security of this Deed of Trust, and to guarantee my promises. I give to the Trustee, in trust, with power of sale, the Property located in _____ County at *(Street Address) (City) (State) (Zip Code)* and further described as:

(Legal Description)

The security interest in the Property includes existing and future improvements, easements, fixtures, attachments, replacements and additions to the Property, insurance refunds, and proceeds.

I promise that I own the Property and have the right to grant Lender an interest in it. I also promise that the Property is free of any lien, except liens that are publicly recorded. I promise that I will generally defend the title to the Property. I will be responsible for Lender's losses that result from a conflicting ownership right in the Property. Any default under my agreements with Lender will be a default of this Deed of Trust.

LENDER AND I PROMISE:

PAYMENT OF LATE CHARGES AND PREPAYMENT

I will timely pay the principal, interest, and any other amounts due under the Loan Agreement. I will comply with the requirements of my escrow account under the Loan Agreement. I will make payments in U.S. currency. If any check is returned to Lender unpaid, Lender may select the form of future payments including:

- a. cash;
- b. money order;
- c. certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are federally insured; or
- d. Electronic Funds Transfer.

I will make payments to the location as Lender directs. Lender will apply my payments against the Loan Agreement only when they are received at the designated location. Lender may change the location for payments if Lender gives me notice.

Lender may return any partial payment that does not bring the account current. Lender may accept any payment or partial payment that does not bring the account current without losing Lender's rights to refuse full or partial payments in the future. I will not use any offset or claim against Lender to relieve me from my duty to make payments under the Loan Agreement.

FUNDS FOR ESCROW ITEMS

I will pay Lender an amount ("Funds") for:

- a. taxes and assessments and other items that can take priority over Lender's security interest in the Property under the Loan Agreement;
- b. leasehold payments or Ground Rents on the Property, if any; and
- c. premiums for any insurance Lender requires under the Loan Agreement.

These items are called "Escrow Items." At any time during the term of the Loan Agreement, Lender may require me to pay Community Association Dues, Fees, and Assessments, if any, as an Escrow Item.

I will promptly give Lender all notices of amounts to be paid. I will pay Lender the Funds for Escrow Items unless Lender, at any time, waives my duty to pay Lender. Any escrow waiver must be in writing. If Lender waives my duty to pay Lender the Funds, I will pay, at Lender's direction, the amounts due for waived Escrow Items. If Lender requires, I will give Lender receipts showing timely payment. My duty to make Escrow Item payments and to provide receipts is an independent promise in the Loan Agreement.

If Lender grants me an escrow waiver, Lender may require me to pay the waived Escrow Items. If I fail to directly pay the waived Escrow Items, Lender may use any right given to Lender in the Loan Agreement. Lender may pay waived Escrow Items and require me to repay Lender. Lender may cancel the waiver for Escrow Items at any time by a notice that complies with the Loan Agreement. If Lender cancels the waiver, I will pay Lender all Funds that are then required under this Section.

At any time Lender may collect and hold Funds in an amount:

- a. to permit Lender to apply the Funds at the time specified under RESPA; and
- b. not to exceed the maximum amount Lender may require under RESPA.

Lender will estimate the amount of Funds due on the basis of current data and reasonable estimates of future expenses for Escrow Items or otherwise, according to Applicable Law. The Funds will be held in an institution whose deposits are federally insured (including Lender, if Lender's deposits are insured) or in any Federal Home Loan Bank.

Lender will timely pay Escrow Items as required by RESPA. Lender will not charge me a fee for maintaining or handling my escrow account. Lender is not required to pay me any interest on the amounts in my escrow account. Lender will give me an annual accounting of the Funds as required by RESPA. If there is a surplus in my escrow account, Lender will follow RESPA. If there is a shortage or deficiency, as defined by RESPA, Lender will notify me, and I will pay Lender the amount necessary to make up the shortage or deficiency. I will repay the shortage or deficiency in no more than twelve monthly payments. Lender will promptly return to me any Funds after I have paid the Loan Agreement in full.

CHARGES AND LIENS

I will timely pay all taxes, assessments, charges, and fines relating to the Property that can take priority over this Deed of Trust. I also will timely pay leasehold payments or Ground Rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. If these items are Escrow Items, I will pay them as required by the Loan Agreement. I will promptly satisfy any lien that has priority over this Deed of Trust unless I:

- a. agree in writing to pay the amount secured by the lien in a manner acceptable to Lender and only so long as I comply with my agreement;
- b. contest the lien in good faith by stopping the enforcement of the lien through legal proceedings (this contest must be satisfactory to Lender); or
- c. obtain an agreement from the holder of the lien that is satisfactory to Lender.

If Lender determines that any part of the Property is subject to a lien that can take priority over this Deed of Trust, Lender may give me a notice identifying the lien. I will satisfy the lien or take one or more of the actions described above in this Section within 10 days of the date of the notice.

PROPERTY INSURANCE

I WILL INSURE THE CURRENT AND FUTURE IMPROVEMENTS TO THE PROPERTY AGAINST LOSS BY FIRE, HAZARDS INCLUDED WITHIN THE TERM "EXTENDED COVERAGE," AND ANY OTHER HAZARDS INCLUDING EARTHQUAKES AND FLOODS, AS LENDER MAY REQUIRE. I WILL KEEP THIS INSURANCE IN THE AMOUNTS (INCLUDING DEDUCTIBLE LEVELS) AND FOR THE PERIODS THAT LENDER REQUIRES. LENDER MAY CHANGE THESE INSURANCE REQUIREMENTS DURING THE TERM OF THE LOAN AGREEMENT. I HAVE THE RIGHT TO CHOOSE AN INSURANCE CARRIER THAT IS ACCEPTABLE TO LENDER. LENDER WILL EXERCISE LENDER'S RIGHT TO DISAPPROVE REASONABLY. I MAY PROVIDE ANY INSURANCE REQUIRED BY THIS DEED OF TRUST EITHER THROUGH EXISTING POLICIES OWNED OR CONTROLLED BY ME OR THROUGH EQUIVALENT COVERAGE FROM ANY INSURANCE COMPANY AUTHORIZED TO TRANSACT BUSINESS IN TEXAS.

I will pay any fee charged by the Federal Emergency Management Agency for the review of any flood zone determination. Lender may require me to pay either:

- a. a one-time charge for flood zone determination, certification and tracking services; or
- b. a one-time charge for flood zone determination and certification services; and subsequent charges each time re-mappings or similar changes occur that reasonably might affect the determination or certification.

If I do not keep any required insurance, Lender may obtain insurance at Lender's option and at my expense. Lender is not required to purchase any type or amount of insurance. Any insurance Lender buys will always protect Lender, but may not protect me, my equity in the Property, my contents in the Property or protect me from certain hazards or liability. I understand that this insurance may cost significantly more than insurance I can purchase. I will owe Lender for the cost of any insurance that Lender buys under this Section. Interest will be charged on this amount at the interest rate used by the Note. The interest will be charged from the date Lender made the payment. Lender will give me notice of the amounts I owe under this Section.

Lender may disapprove any insurance policy or renewal. Any insurance policy must include a standard mortgage clause, and must name Lender as mortgagee or a loss payee. I will give Lender all insurance premium receipts and renewal notices, if Lender requests. If I obtain any optional insurance to cover damage or destruction of the Property, I will name Lender as a loss payee. In the event of loss, I will give notice to Lender and the insurance company. Lender may file a claim if I do not file one promptly. Lender will apply insurance proceeds to repair or restore the Property unless Lender's interest will be reduced or it will be economically unreasonable to perform the Work. Lender may hold the insurance proceeds until Lender has had an opportunity to inspect the Work and Lender considers the Work to be acceptable. The insurance proceeds may be given in a single payment or multiple payments as the Work is completed. Lender will not pay any interest on the insurance proceeds. If I hire a public adjuster or other third party, I am responsible for the fee. It will not be paid from the insurance proceeds. The insurance proceeds will be applied to the amount I owe if Lender's interest will be reduced or if the Work will be economically unreasonable to perform. Lender will pay me any excess insurance proceeds. Lender will apply insurance proceeds in the order provided by the Loan Agreement.

If I abandon the Property Lender may file, negotiate, and settle any insurance claim. If the insurance company offers to settle a claim and I do not respond within thirty days to a notice from Lender, then Lender may settle the claim. The 30-day period will begin when the notice is given. If I abandon the Property, fail to respond to the offer of settlement, or Lender forecloses on the Property, I assign to Lender:

- a. my rights to any insurance proceeds in an amount not greater than what I owe; and
- b. any of my other rights under insurance policies covering the Property.

Lender may apply the proceeds to repair or restore the Property or to the amount that I owe.

PRESERVATION, MAINTENANCE, PROTECTION, AND INSPECTION OF THE PROPERTY

I will not destroy, damage, or impair the Property, allow it to deteriorate, or commit waste. Whether or not I live in the Property, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to the Property to avoid further deterioration or damage unless Lender and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring the Property only if Lender releases the insurance or condemnation proceeds for the damage to or the taking of the Property. Lender may release proceeds for the repairs and restoration in a single payment or in a series of payments as the Work is completed. I still am obligated to complete repairs or restoration of the Property even if there are not enough proceeds to complete the Work. If this Deed of Trust secures a unit in a condominium or planned unit development, I will perform all of my obligations under the declaration or covenants creating or governing the condominium or planned unit development, and any other relevant document. Lender or Lender's agent may inspect the Property. Lender may inspect the interior of the Property with reasonable cause. Lender will give me notice stating reasonable cause when or before the interior inspection occurs.

PROTECTION OF LENDER'S INTEREST IN THE PROPERTY AND RIGHTS UNDER THE DEED OF TRUST

Lender may do whatever is reasonable to protect Lender's interest in the Property, including protecting or assessing the value of the Property, and securing or repairing the Property. Lender may do this when:

- a. I fail to perform the promises and agreements contained in the Loan Agreement;
- b. a legal proceeding might significantly affect Lender's interest in the Property or rights under the Loan Agreement (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may have priority over the Loan Agreement or to enforce laws or regulations); or
- c. I abandon the Property.

In order to protect Lender's interest in the Property, Lender may:

- a. pay amounts that are secured by a lien on the Property which has or will have priority over the Loan Agreement;
- b. appear in court; or
- c. pay reasonable attorneys' fees.

Lender may enter the Property to secure it. To secure the Property, Lender may make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Lender has no duty to secure the Property. Lender is not liable for failing to take any action listed in this Section. Any amounts Lender pays under this Section will become my additional debt secured by the Loan Agreement. These amounts will earn interest at the rate specified in the Loan Agreement. The interest will begin on the date the amounts are paid. Lender will give me notice requesting payment of these amounts. If the Loan Agreement is on a leasehold, I will comply with the lease.

ASSIGNMENT OF MISCELLANEOUS PROCEEDS AND FORFEITURE

Any Miscellaneous Proceeds will be assigned and paid to Lender. If the Property is damaged, Miscellaneous Proceeds will be applied to restore or repair the Property. Lender will only do this if Lender's interest in the Property will not be reduced and if the work will be economically reasonable to perform. Lender will have the right to hold Miscellaneous Proceeds until Lender inspects the Property to ensure the work has been completed to Lender's satisfaction. Lender must make the inspection promptly. Lender may release proceeds for the work in a single payment or in multiple payments as the work is completed. Lender is not required to pay me any interest on the Miscellaneous Proceeds. The Miscellaneous Proceeds will be applied to the amount I owe if Lender's interest in the Property will be reduced or the work will be economically unreasonable to perform. Lender will pay me any excess Miscellaneous Proceeds. Lender will apply Miscellaneous Proceeds in the order provided by the Loan Agreement.

Lender will apply all Miscellaneous Proceeds to the amount I owe in the event of a total taking, destruction, or loss in value of the Property. Lender will apply the Miscellaneous Proceeds even if all payments are current. Lender will give any excess Miscellaneous Proceeds to me.

A partial loss can include a taking, destruction, or loss in value. In the event of a partial loss, the Miscellaneous Proceeds will be applied in one of two ways:

- a. If the fair market value of the Property immediately before the partial loss is less than the amount I owe immediately before the partial loss, then Lender will apply all Miscellaneous Proceeds to the amount I owe even if all payments are current.
- b. If the fair market value of the Property immediately before the partial loss is equal to or greater than the amount I owe immediately before the partial loss, then Lender will apply Miscellaneous Proceeds to the amount I owe in the following manner:
 1. The amount of Miscellaneous Proceeds multiplied by the result of,
 2. The amount I owe immediately before the partial loss divided by the fair market value of the Property immediately before the partial loss.

Lender and I can agree otherwise in writing. Lender will give any excess Miscellaneous Proceeds to me.

If I abandon the Property, Lender may apply Miscellaneous Proceeds either to restore or repair the Property, or to the amount I owe.

Damage to the Property caused by a third party may result in a civil proceeding. If Lender gives me notice that the third party offers to settle a claim for damages to the Property and I fail to respond to Lender within thirty days, Lender may accept the offer and apply the Miscellaneous Proceeds either to restore or repair the Property or to the amount I owe. If the proceeding results in an award of damages, Lender will apply the Miscellaneous Proceeds according to this Section.

FORBEARANCE NOT A WAIVER

If Lender doesn't enforce Lender's rights every time, Lender can still enforce them later.

JOINT AND SEVERAL LIABILITY, DEED OF TRUST EXECUTION, SUCCESSORS OBLIGATED

I understand that Lender may seek payment from only me without first looking to any other Borrower.

Any person who signs this Deed of Trust, but not the Note:

- a. will not have to repay the Note;
- b. is not a surety or guarantor; and,
- c. only gives a security interest in the Property under this Deed of Trust.

The Lien against the Property is voluntary. Each owner and each owner's spouse consent to the Lien. Lender and I may modify the Loan Agreement in writing. Lender must approve my successor in writing. My successor will receive all of my rights and benefits under the Loan Agreement. I still will be responsible under the Loan Agreement unless Lender releases me in writing. The Loan Agreement will extend to Lender's assigns or successors.

USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than Applicable Law allows.

MAILING OF NOTICES TO BORROWER

Lender or I may mail or deliver any notice to the address above. Lender or I may change the notice address by giving written notice. Lender's duty to give me notice will be satisfied when Lender mails it.

APPLICATION OF LAW

Federal law and Texas law apply to this Loan Agreement.

RULES OF CONSTRUCTION

As used in the Loan Agreement:

- a. words in the singular will mean and include the plural and vice versa; and
- b. the word "may" gives discretion without imposing any duty to take action.

LOAN AGREEMENT COPIES

At the time the Loan Agreement is made, Lender will give me copies of all documents I sign.

DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the Property is sold or transferred without Lender's prior written consent, Lender may require immediate payment in full of all that I owe under this Loan Agreement. Lender will not exercise this option if Applicable Law prohibits.

If Lender exercises this option, Lender will give me notice that Lender is demanding payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, Lender may use any remedy allowed by the Loan Agreement.

LENDER, CONTRACTOR, AND I PROMISE AND AGREE:

ACCELERATION AND REMEDIES

Lender will give me notice prior to acceleration if I am in default under the Loan Agreement. The notice will specify:

- a. the default;
- b. the action required to cure the default;
- c. a date, not less than 21 days from the date Lender gives me notice, to cure the default; and
- d. that my failure to cure the default on or before the specified date will result in acceleration of all that I owe under the Loan Agreement and sale of the Property.

Lender will inform me of my right to reinstate after acceleration. If the default is not cured before the specified date, Lender has the option to require immediate payment in full of all I owe. If Lender is not paid all I owe, Lender may sell the Property or seek other remedies allowed by Applicable Law without further notice. Lender may collect Lender's reasonable expenses incurred in seeking the remedies provided in this Section. These expenses may include court costs, attorneys' fees, and costs of title search.

I understand the power of sale is not a confession of judgment or a power of attorney to confess judgment or an appearance by me in a judicial proceeding. If the Property is sold under this Section I or my successors will immediately give possession of the Property to the purchaser. If I do not, I or anyone residing on the Property may be removed by writ of possession.

POWER OF SALE

Lender has a fully enforceable lien on the Property. Lender's remedies for my default include an efficient means of foreclosure under the law. Lender and the Trustee have all powers to conduct a foreclosure. If Lender chooses to use the power of sale, Lender will give me notice of the time, place and terms of the sale by posting and filing notice at least 21 days before the sale as provided by law. Lender will give me notice by mail as required by law. Failure to cure default on or before the date in the notice may result in acceleration of the amount that I owe under this Loan Agreement. The notice will inform me of my right to reinstate after acceleration and assert in court that I am not in default or any other defense to acceleration or sale. If I do not cure the default on or before the date in the notice, Lender, at Lender's option, may declare all that I owe under this Loan Agreement to be immediately due and payable and may invoke the power of sale and any other remedies permitted by Applicable Law. The sale will be conducted at a public place. The sale will be held:

- a. on the first Tuesday of a month;
- b. at a time stated in the notice or no later than 3 hours after the time; and
- c. between 10:00 a.m. and 4:00 p.m.

I allow the Trustee to sell the Property to the highest bidder for cash in one or more pieces and in any order the Trustee determines. Lender may purchase the Property at any sale.

Trustee will give a Trustee's deed to the foreclosure sale purchaser. A Trustee's deed will convey:

- a. good title to the Property; and
- b. title with promises of general warranty from me.

I will defend the purchaser's title to the Property against all claims and demands. The description of facts contained in the Trustee's deed will be sufficient to legally prove the truth of the statements made in the deed. Trustee will apply the proceeds of the sale in the following order:

- a. to all expenses of the sale, including court costs and reasonable Trustee's and attorneys' fees;
- b. what I owe; and
- c. any excess to the person or persons legally entitled to it.

If the Property is sold through a foreclosure sale governed by this Section, I or any person in possession of the Property through me, will give up possession of the Property without delay. A person who does not give up possession is a holdover and may be removed by a court order.

BORROWER'S RIGHT TO REINSTATE AFTER ACCELERATION

I have the right to stop Lender from enforcing the Loan Agreement any time before the earliest of:

- a. 5 days before sale of the Property under any power of sale included in the Loan Agreement;
- b. the day required by Applicable Law for the termination of my right to reinstate; or
- c. the entry of a judgment enforcing the Loan Agreement.

I can stop the enforcement of the Loan Agreement and reinstate the Loan Agreement if all the following conditions are met:

- a. Lender is paid what I owe under the Loan Agreement as if no acceleration had occurred;
- b. I cure any default of any promise or agreement;
- c. Lender is paid all expenses allowed by Applicable Law, including reasonable attorneys' fees and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under the Loan Agreement;
- d. I comply with any reasonable requirement to assure Lender that Lender's interest in the Property will remain intact; and
- e. I comply with any reasonable requirement to assure Lender that my ability to pay what I owe will remain intact.

Lender may require me to pay for the reinstatement in one or more of the following forms:

- a. cash;
- b. money order;
- c. certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are federally insured; or
- d. Electronic Funds Transfer.

Upon reinstatement, the Loan Agreement will remain effective as if no acceleration had occurred. However, this right to reinstate will not apply if I sell or transfer any interest in the Property without Lender's permission.

ASSIGNMENT OF RENTS, APPOINTMENT OF RECEIVER, LENDER IN POSSESSION

As additional security, I assign to you the rents of the Property, provided that you have the right, prior to acceleration or abandonment of the Property, to collect and retain the rents as they become due. Upon acceleration or abandonment, you, by agent or by court-appointed receiver, will be entitled to enter, take possession, manage the Property, and collect due and past due rents. All rents you or the court-appointed receiver collect will be applied first to payment of the cost of management of the Property and collection of rents, including receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Deed of Trust. You and the receiver will be liable to account only for rents received.

RELEASE

Lender will cancel and return the Note to me and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the Lien to a Lender that is refinancing the Loan Agreement. I will pay only the cost of recording the release of lien.

TRUSTEES AND TRUSTEE LIABILITY

One or more Trustees acting alone or together may exercise or perform all rights, remedies and duties of the Trustee under the Loan Agreement. Lender may remove or change any Trustee (e.g., add one or more Trustees or appoint a successor Trustee to any Trustee). This removal or change of Trustee must be in writing and may be:

- a. at Lender's option;
- b. with or without cause; and
- c. by power of attorney or otherwise.

The substitute, additional, or successor Trustee will receive the title, rights, remedies, powers, and duties under the Loan Agreement and Applicable Law.

Trustee may rely upon any notice, request, consent, demand, statement, or other document reasonably believed by Trustee to be valid. Trustee will not be liable for any act or omission unless the act or omission is willful.

ASSIGNMENT OF CONTRACTOR'S LIEN, COMMENCEMENT OF WORK

Contractor and I have entered into the Contract for improvements to be made to the Property. I will perform my duties under the Contract. Under the Contract, I gave Contractor a Lien on the Property. Contractor permanently transfers the Lien and any other interest Contractor has in the Property to Lender. As additional security, Contractor also agrees that the lien created by this Deed of Trust has priority over the Lien. The purpose of the Note is to pay in whole or in part the improvements to be made to the Property by the Contractor. Contractor and I agree that the Lien is for Lender's sole benefit. Any other interest Contractor has in the Property will be merged with the Lien, and may be enforced by Lender according to the terms of this Deed of Trust. Contractor and I further agree that no Work was performed or material delivered before the Contract was executed.

SUBROGATION

If I ask, Lender will use proceeds from the Loan Agreement to pay off all valid outstanding liens against the Property. Lender will then own all rights, superior titles, liens, and interests owned or claimed by any owner or holder of an outstanding lien or debt. Lender owns these things whether the lien or debt is transferred to Lender or whether it is released by the holder upon payment.

PARTIAL INVALIDITY

If any portion of the sums secured by this Deed of Trust cannot be lawfully secured, payments minus those sums will be applied first to the portions not secured. If any charge provided for in this Loan Agreement, separately or together with other charges that are considered part of this Loan Agreement, violates Applicable Law, the charge is reduced to the extent necessary to eliminate the violation. Lender will refund the amount of interest or other charges paid to Lender in excess of the amount permitted by Applicable Law. At Lender's option, the amount in excess will either be refunded directly to me or will be applied to reduce the principal of the debt.

RENEWAL AND EXTENSION

The Note secured by this Deed of Trust is renewed and extended, but not in extinguishment of the debt under the Contract identified in the paragraph entitled "Assignment of Contractor's Lien, Commencement of Work" and the Note.

SALE OF NOTE, CHANGE OF LOAN SERVICER, NOTICE OF GRIEVANCE, LENDER'S RIGHT TO COMPLY

A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA.

Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section.

No agreement between Lender and me or any third party will limit Lender's ability to comply with Lender's duties under the Loan Agreement and Applicable Law.

Lender and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law.

Lender and I intend to conform the Loan Agreement to the provisions of Applicable Law. If any part of the Loan Agreement is in conflict with the Applicable Law, then that part will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Lender's right to cure any violation will survive my paying off the Loan Agreement. My right to cure will override any conflicting provision of the Loan Agreement.

Lender's right to comply as provided in this Section will survive the payoff of the Loan Agreement. The provisions of this Section will supersede any inconsistent provision of the Loan Agreement.

HAZARDOUS SUBSTANCES

Hazardous Substances:

- a. "Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials;
- b. "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection;
- c. "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and
- d. "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. I will not do, or allow anyone else to do, anything affecting the Property:

- a. that is in violation of any Environmental Law;
- b. that creates an Environmental Condition; or
- c. that, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property.

The presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and for the maintenance of the Property are allowed. This includes Hazardous Substances found in consumer products.

I will promptly give Lender written notice of:

- a. any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which I have actual knowledge;
- b. any Environmental Condition, including any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and
- c. any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property.

If I learn that, or am notified by any governmental or regulatory authority, or any private party that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, I promptly will take all necessary remedial actions in accordance with Environmental Law. Lender will have no obligation for an Environmental Cleanup.

LENDER'S RIGHTS AND BORROWER'S RESPONSIBILITIES

Lender is entitled to all rights, superior title, liens, and equities owned or claimed by any grantor or holder of any liens and debts due before the signing of the Loan Agreement. Lender may acquire these rights by assignment or the holder may release them upon payment.

Each person who signs the Deed of Trust is responsible for each promise and duty in the Deed of Trust.

Unless prohibited by Applicable Law, this Section will not:

- a. impair in any way the Loan Agreement or Lender's right to collect all that I owe under the Loan Agreement;
- b. affect Lender's right to any promise or condition of the Loan Agreement.

DEFAULT

Any default of my agreements with Lender will be a default of this Deed of Trust.

**REQUEST FOR NOTICE OF DEFAULT
AND FORECLOSURE UNDER SUPERIOR
MORTGAGES OR DEEDS OF TRUST**

Lender and I request that the holder of any mortgage, deed of trust or other claim with a lien that has priority over this Deed of Trust give Lender notice, at Lender's address listed on this Deed of Trust, of any default under the superior claim and of any sale or other foreclosure action.

BY SIGNING BELOW, I accept and agree to the terms and promises contained in the Loan Agreement and in any rider I sign which is recorded with it. (DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. I MUST RECEIVE A COPY OF ANY DOCUMENT I SIGN.)

IN WITNESS WHEREOF, Borrower and Contractor have executed this Deed of Trust and Assignment of Contractor's Lien.

-Contractor

By: _____

_____(Seal)
-Borrower

Printed Name: _____
(Please Complete)

_____(Seal)
-Borrower

Printed Name: _____
(Please Complete)

_____(Seal)
-Borrower

_____(Seal)
-Borrower

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by (name of owner) _____.

Notary Public

(Seal)

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by (name of contractor) _____.

Notary Public

(Seal)

Figure: 7 TAC §90.703(a)(1)(B)

NOTIFICACIÓN DE CRÉDITO AL CONSUMIDOR (Préstamo a Plazos)

<p>"ANNUAL PERCENTAGE RATE" -- TASA PORCENTUAL ANUAL</p> <p>"The cost of my credit as a yearly rate" -- El costo de mi crédito expresado como tasa anual</p> <p style="text-align: right;">_____ %</p>	<p>"FINANCE CHARGE" -- CARGO POR FINANCIAMIENTO</p> <p>"The dollar amount the credit will cost me" -- La cantidad en dólares que me costará el crédito</p> <p>\$ _____</p>	<p>"Amount Financed" -- Cantidad Financiada</p> <p>"The amount of credit provided to me or on my behalf" -- La cantidad de crédito otorgada a mí o en mi nombre</p> <p>\$ _____</p>	<p>"Total of Payments" -- Total de Pagos</p> <p>"The amount I will have paid after I have made all payments as scheduled" -- La cantidad que habré pagado después de haber efectuado todos los pagos de acuerdo al plan</p> <p>\$ _____</p>
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ITEMIZATION OF THE AMOUNT FINANCED

I have the right to receive at this time an itemization of the Amount Financed.

- I want an itemization. I do not want an itemization.

DETALLE DEL CARGO POR FINANCIAMIENTO

Tengo el derecho a recibir el detalle del Cargo por Financiamiento ahora.

- Deseo el detalle. No deseo el detalle.

My Payment Schedule will be -- Mi Plan de Pagos será		
Number of Payments -- Número de Pagos	Amount of Payments -- Cantidad de Cada Pago	When Payments are Due -- Cuando se Vence Cada Pago

Credit life insurance, credit disability insurance, involuntary unemployment insurance, and the gap waiver agreement are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional cost.

-- Seguro de vida para el Deudor, seguro de incapacidad para el Deudor, seguro de desempleo involuntario, y acuerdo de seguro gap no se requieren para obtener crédito, y no se proveerá a menos que firme y acuerde pagar el costo adicional.

Type -- Tipo	Premium -- Prima	Signature -- Firma
Credit Life -- Seguro de Vida para el Deudor	\$ _____	I want Credit Life Insurance -- Deseo Seguro de Vida para el Deudor _____ Signature -- Firma
Credit Disability -- Seguro de Discapacidad para el Deudor	\$ _____	I want Credit Disability Insurance -- Deseo Seguro de Discapacidad para el Deudor _____ Signature -- Firma
Involuntary Unemployment Insurance -- Seguro de Desempleo Involuntario	\$ _____	I want Involuntary Unemployment Insurance -- Deseo Seguro de Desempleo Involuntario _____ Signature -- Firma
Gap Waiver Agreement -- Acuerdo de Abandono de Seguro Gap	\$ _____	I want Gap Waiver Agreement -- Deseo Acuerdo de Abandono de Seguro Gap _____ Signature -- Firma

I may obtain property insurance from anyone I want that is acceptable to you. If I get the insurance from you, I will pay \$_____ for the term of _____.

Puedo obtener seguro de propiedad de quien yo deseo si es aceptable para Usted. Si obtengo el seguro de Usted, pagare \$_____ por un plazo de _____.

Security: You will have a security interest in the following described collateral _____.

Garantía: Como garantía Usted tendrá parte (participación) en el siguiente colateral aquí descrito _____.

Filing Fees \$_____ Non-filing insurance \$_____

Coutas por Inscripción \$_____ Seguro de no-inscripción \$_____

Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.

Cargos por Retrasos: Si cualquier parte de un pago queda sin pagar por 10 días después de vencerse, a mí se me puede cobrar el 5% de la cantidad del pago.

Prepayment: If I payoff early, I

may will not have to pay a penalty.

may will not be entitled to a refund of part of the Finance Charge.

Pago por Adelantado: Si pago por adelantado,

tendría que no tendré que pagar una penalización.

tendría no tendré derecho a un reembolso de parte del Cargo por Financiamiento.

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Información Adicional: Ver los documentos del contrato para información adicional sobre no-pago, retraso, cualquier re-pago total requerido antes de la fecha de vencimiento, y reembolsos y penalizaciones por pagar por adelantado.

Figure: 7 TAC §90.703(a)(2)(B)(i)

NOTIFICACIÓN DE CRÉDITO AL CONSUMIDOR (Préstamo)

"ANNUAL PERCENTAGE RATE" -- TASA PORCENTUAL ANUAL _____ %	"FINANCE CHARGE" -- CARGO POR FINANCIAMIENTO \$ _____	"Amount Financed" -- Cantidad Financiada \$ _____	"Total of Payments" -- Total de Pagos \$ _____
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My Payment Schedule will be -- Mi Plan de Pagos será		
Number of Payments -- Número de Pagos	Amount of Payments -- Cantidad de Cada Pago	When Payments are Due -- Cuando se Vence Cada Pago

Security: You will have a security interest in the following described collateral _____.

Garantía: Como garantía Usted tendrá parte (participación) en el siguiente colateral aquí descrito _____.

Late Charge Option 1

Late Charge: If I don't pay an entire payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment.

Cargos por Retrasos: Si no doy un pago completo dentro de 10 días después de vencerse, me puedes cobrar un cargo por retraso. El cargo por retraso será el 5% de la cantidad del pago.

Late Charge Option 2

Late Charge: For a loan that has an amount financed of less than \$100, the late charge for a payment that is unpaid for 10 days after it is due is 5% of the amount of the installment. For a loan that has an amount financed of \$100 or more, the late charge for a payment that is unpaid for 10 days after it is due is the greater of \$10 or 5% of the amount of the installment.

Cargos por Retrasos: Para un préstamo en el cual la cantidad financiada es menor de \$100, el cargo por retraso en un pago que no se liquida por 10 días después de vencerse es 5% de la cantidad del pago. Para un préstamo en el cual la cantidad financiada es de \$100 o más, el cargo por retraso en un pago que no se liquida por 10 días después de vencerse es de \$10 o 5% de la cantidad del pago atrasado, lo que sea mayor.

Figure: 7 TAC §90.703(a)(2)(B)(ii)

CONCEPTOS FINANCIEROS

ITEMIZATION OF THE FINANCE CHARGE -- DETALLE DEL CARGO POR FINANCIAMIENTO
Acquisition Charge -- Cargo por Adquisición
Installment Account Handling Charge -- Cargo por Manejo de Cuenta

ITEMIZATION OF THE AMOUNT FINANCED -- DETALLE DE LA CANTIDAD FINANCIADA	
Previous Account --	Cuenta Anterior
Late Charge on Previous Account --	Cargo por Retrasos en la Cuenta Anterior
Previous Balance --	Saldo Anterior
Less Refund --	Menos Reembolso
Net Balance Renewed --	Saldo Neto Renovado
Cash to Me --	Efectivo entregado a mí
Amount Financed --	Cantidad Financiada

"ANNUAL PERCENTAGE RATE" (TASA PORCENTUAL ANUAL)	--	"The cost of my credit as a yearly rate" (El costo de mi crédito expresado como tasa anual)
"FINANCE CHARGE" (CARGO POR FINANCIAMIENTO)	--	"The dollar amount the credit will cost me" (La cantidad en dólares que me costara el crédito)
"Amount Financed" (Cantidad Financiada)	--	"The amount of credit provided to me or on my behalf" (La cantidad de crédito otorgada a mí o en mi nombre)
"Total of Payments" (Total de Pagos)	--	"The amount I will have paid after I have made all payments as scheduled" (La cantidad que habré pagado después de haber efectuado todos los pagos de acuerdo al plan)

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Información Adicional: Ver los documentos del contrato para información adicional sobre no-pago, retraso, cualquier re-pago total requerido antes de la fecha de vencimiento, y reembolsos y penalizaciones por pagar por adelantado.

Figure: 7 TAC §90.703(b)

NOTIFICACIÓN DE CRÉDITO AL CONSUMIDOR (Contrato de Menudeo a Plazos para Vehículo Automotor)

<p>"ANNUAL PERCENTAGE RATE" -- TASA PORCENTUAL ANUAL</p> <p>"The cost of my credit as a yearly rate" -- El costo de mi crédito expresado como tasa anual</p> <p style="text-align: right;">_____ %</p>	<p>"FINANCE CHARGE" -- CARGO POR FINANCIAMIENTO</p> <p>"The dollar amount the credit will cost me" -- La cantidad en dólares que me costará el crédito</p> <p style="text-align: right;">\$ _____</p>	<p>"Amount Financed" -- Cantidad Financiada</p> <p>"The amount of credit provided to me or on my behalf" -- La cantidad de crédito otorgada a mí o en mi nombre</p> <p style="text-align: right;">\$ _____</p>	<p>"Total of Payments" -- Total de Pagos</p> <p>"The amount I will have paid after I have made all payments as scheduled" -- La cantidad que habré pagado después de haber efectuado todos los pagos de acuerdo al plan</p> <p style="text-align: right;">\$ _____</p>	<p>"Total Sale Price" -- Precio de Venta Total</p> <p>"The total cost of my purchase on credit, including down payment of" -- El costo total de mi compra a crédito, incluyendo un enganche de</p> <p style="text-align: right;">\$ _____</p>
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ITEMIZATION OF THE AMOUNT FINANCED

I have the right to receive at this time an itemization of the Amount Financed.

I want an itemization. I do not want an itemization.

DETALLE DEL CARGO POR FINANCIAMIENTO

Tengo el derecho a recibir el detalle del Cargo por Financiamiento ahora.

Deseo el detalle. No deseo el detalle.

My Payment Schedule will be -- Mi Plan de Pagos será		
Number of Payments -- Número de Pagos	Amount of Payments -- Cantidad de Cada Pago	When Payments are Due -- Cuando se Vence Cada Pago

Credit life insurance, credit disability insurance, and gap insurance are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional cost.

Seguro de vida para el Deudor, seguro de incapacidad para el Deudor, y acuerdo de seguro gap no se requieren para obtener crédito, y no se proveerá a menos que firme y acuerde pagar el costo adicional.

Type -- Tipo	Premium -- Prima	Signature -- Firma
Credit Life -- Seguro de Vida para el Deudor	\$ _____	I want Credit Life Insurance -- Deseo Seguro de Vida para el Deudor _____ Signature -- Firma
Credit Disability -- Seguro de Discapacidad para el Deudor	\$ _____	I want Credit Disability Insurance -- Deseo Seguro de Discapacidad para el Deudor _____ Signature -- Firma
Gap Insurance -- Seguro Gap	\$ _____	I want Gap Insurance -- Deseo Seguro Gap _____ Signature -- Firma

I may obtain property insurance from anyone I want that is acceptable to you. If I get the insurance from you, I will pay \$_____ for the term of _____.

Puedo obtener seguro de propiedad de quien yo deseo si es aceptable para Usted. Si obtengo el seguro de Usted, pagaré \$_____ por un plazo de _____.

Security: You will have a security interest in the motor vehicle being purchased.

Garantía: Como garantía Usted tendrá parte (participación) en el vehículo automotor que está comprando.

Filing Fees \$ _____

Cuotas por Inscripción \$ _____

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 late charge on the past due amount will 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 of _____% of the scheduled payment.

Cargo por Retraso: [**Ganancia Diaria Real:**] (Opción A:) Si no recibes mi pago completo dentro de 15 días después de vencerse (10 días si estoy comprando un vehículo comercial de carga pesada), pagaré un cargo por retraso con tasa del _____% anual sobre la cantidad del pago atrasado. El cargo por retraso sobre la cantidad del pago atrasado se calculará desde la fecha de vencimiento del pago hasta la fecha en que se realice el pago. (Opción B:) Si no recibes mi pago completo dentro de 15 días después de vencerse, (10 días si estoy comprando un vehículo comercial de carga pesada), pagaré un cargo por retraso de _____% anual del pago programado.

[**Scheduled Installment Earnings 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.

[**Método de Ganancia de Pagos Programados o suma de los saldos periódicos:**] (Opción A:) Si no recibes mi pago completo dentro de 15 días después de vencerse, (10 días si estoy comprando un vehículo comercial de carga pesada), pagaré un cargo sobre la cantidad del pago atrasado basado en la tasa del contrato. (Opción B:) Si no recibes mi pago completo dentro de 15 días después de vencerse, (10 días si estoy comprando un vehículo comercial de carga pesada), pagaré un cargo por retraso con tasa del _____% anual sobre la cantidad atrasada. (Opción C:) Si no recibes mi pago completo dentro de 15 días después de vencerse, (10 días si estoy comprando un vehículo comercial de carga pesada), pagaré un cargo por retraso de _____% de la cantidad del pago programado.

Prepayment: If I payoff early, I

may will not have to pay a penalty.

may will not be entitled to a refund of part of the Finance Charge.

Pago por Adelantado: Si pago por adelantado,

tendría que no tendré que pagar una penalización.

tendría no tendré derecho a un reembolso de parte del Cargo por Financiamiento.

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Información Adicional: Ver los documentos del contrato para información adicional sobre no-pago, retraso, cualquier pago total requerido antes de la fecha de vencimiento, y reembolsos y penalizaciones por pagar por adelantado.

Figure: 22 TAC §78.6(a)

SCHEDULE OF FEES	
Fee Description	Fee
DC License – Application (includes \$50 transcript verification and online jurisprudence course)	\$200
DC License – Repeat Jurisprudence Examination	\$100
DC License – Initial (Prorated)	\$120
DC License – Renewal, On Time	\$150
DC License – Renewal, Late under 90 days	\$217.50
DC License – Renewal, Late 90 days to 1 year	\$285
DC License – Renewal, Late up to 3 years for good cause	Calculated
DC License – Reinstatement (practiced in another state)	\$145
DC License – Inactive License Processing	\$0
DC License – Reactivate from Inactive	\$150
DC License – Duplicate copy of wall certificate	\$25
DC License – Duplicate copy of pocket-sized certificate	\$10
College Faculty DC License – Application and Initial	\$75
College Faculty DC License – Renewal	\$75
Facility Registration – Application and Initial Registration	\$55
Facility Registration – Renewal, On Time	\$65
Facility Registration – Renewal, Late under 90 days	\$117
Facility Registration – Renewal, Late 90 days to 1 year	\$168
Facility Registration – Duplicate copy of wall certificate	\$25
Radiologic Technician Registration – Initial	\$35
Radiologic Technician Registration – Renewal	\$36
Radiologic Technician Registration – Renewal, Late	\$61
Continuing Education Course Annual Approval	\$100
Online Jurisprudence Continuing Education Course	\$55
Certification of DC license to another state board (Letter of Good Standing)	\$25
Criminal history letter fee (Declaratory order of eligibility)	\$150
Printed copy of statutes and rules	\$10
Returned check fee	\$25

MAXIMUM SANCTIONS TABLE

CATEGORY I. 1st Offense: \$1000* 2nd Offense: \$1000* 3rd Offense: \$1000* *and/or revocation	
Violation	Reference:
Practicing without a chiropractic license	22 TAC §78.9(d) CA §201.301
Practicing with an expired license (nonrenewal due to default student loan)	22 TAC §75.2(i) CA §§201.301, 201.351, 201.354(f)
Practicing with an expired license (nonrenewal)	22 TAC §75.2(i) CA §§201.301, 201.351, 201.354(f)
Practicing while on inactive status	22 TAC §75.4(f) CA §§201.301, 201.311(b)(2)
Practicing in non-compliance with continuing education requirements	22 TAC §75.6(g) CA §§201.301, 201.354(f)
Improper control of patient care and treatment	22 TAC §73.4(b)
Grossly unprofessional conduct	22 TAC §78.1 CA §201.502(a)(7)
Lack of diligence/gross inefficient practice	22 TAC §78.2 CA §201.502(a)(18)
Practicing outside the scope of practice	22 TAC §§78.2, 78.13; 78.15 CA §§ 201.002, 201.502(a)(1), (18)
Performing radiologic procedures without registering, with an expired registration, or without DSHS approval; failure to renew (including non-payment of fees)	22 TAC §74.2(a), (d), (e), (h)
MRTCA, DSHS rules or order	22 TAC §74.2(h), (j), (o)
Performing (1) radiologic procedures without supervision, or (2) cineradiography or other restricted procedure	22 TAC §74.2(g), (k), (l), (m) (1), (2)
Permitting a non-registered or non-DSHS approved person to perform radiologic procedures or CRT to perform procedures without supervision	22 TAC §74.2(k), (n)
Delegating to a non-licensee authority to perform	22 TAC §77.5(b), (f), (i),

adjustments or manipulations	(j)
Failure to supervise a student or recent graduate	22 TAC §77.5(c), (d)
Delegating authority to a licensee whose license has been suspended or revoked	22 TAC §77.5(h) CA §201.5025(a)(6)(A)
Failure to comply with the CA, other law or a board order or rule	22 TAC §78.9(c) CA §§201.501, 201.502(a)(1)
Failure to comply with down-time restrictions	22 TAC §78.9(f)
Medicaid fraud	CA §201.502(a)(2), (7); HRC §§36.002, 36.005
Solicitation	Occ. Code §§102.001, 102.006 CA §201.502 (a)(21)
Default on Student Loan	Occ. Code Chapter 56 22 TAC §77.6
Failure to comply with requirements/restrictions on prepaid treatment plans	22 TAC §77.12
Failure to respond to board inquiries	22 TAC §§78.3(h), 78.5
Failure to report criminal conviction	22 TAC §78.3(f)
Statutory violations: Deception or fraud in practice Presenting/using license, certificate or diploma/transcript illegally/fraudulently obtained, counterfeit/altere Presenting untrue statement/document/testimony to pass examination Conviction of crime of moral turpitude or felony Procuring or assisting an abortion Grossly unprofessional conduct or dishonorable conduct likely to deceive or defraud public Habit of intemperance or drug addiction or other habit endangering life of patient Directly/indirectly employing/associating with person commits unlicensed practice Purchasing, selling, bartering, etc. a chiropractic degree, license, certificate, diploma/transcript relating to application to practice Altering with fraudulent intent chiropractic license, certificate, or diploma Impersonating or acting as proxy in examination Impersonating a licensed chiropractor Permitting a license to be used by another to practice Proved insane	CA §§201.502(a)(2) - (8), (10), (12) - (17), (19) - (20); 201.5025(a)(1)-(7); 201.5026(a)(1)-(5)

<p>Failing to clearly differentiate a chiropractic office/clinic from another business/enterprise</p> <p>Personal solicitation of patient or causing patient to be solicited by use of case history of another patient of another chiropractor</p> <p>Submission of false or misleading statement, document or certificate in application for licensure</p> <p>Commission of fraud/deception in taking/passing exam</p> <p>Commission of unprofessional/dishonorable conduct that is likely to deceive/defraud, or injure public</p> <p>Engage in conduct that subverts or attempts to subvert examination process</p> <p>Directly/indirectly employs a person whose license to practice has been suspended/cancelled/revoked</p> <p>Associates in practice – person with license to practice has been suspended/cancelled/revoked or convicted of unlawful practice in Tx or elsewhere</p> <p>Directly/indirectly aids or abets practice of chiropractic by unlicensed person</p> <p>Commits an act resulting from unprofessional or dishonorable conduct that does deceive/defraud public:</p> <ul style="list-style-type: none"> violates any state/federal law connected with practice prescribes/administers a nontherapeutic treatment violates Section 311.00025 of Health and Safety Code Failure to adequately supervise activities of staff Knowingly delegating responsibility to unqualified persons 	
Impaired licensee/applicant	22 TAC §72.4
Criminal Conviction	Occ. Code §53.021 CA §§201.502(a)(5); 201.5065 22 TAC §78.3(b),(c)
Unauthorized Practice of Acupuncture	22 TAC §78.17
Permitting unlicensed person to practice	CA §§201.502(a)(10); 201.5025(a)(7)
Violation of patient confidentiality	CA §201.402(a)
Practicing chiropractic while intoxicated	CA §201.606(b)
CATEGORY II. 1st Offense: \$500 2nd Offense: \$750* 3rd Offense: \$1000* *and/or suspension	
Violation	Reference
Fail to report Out-of-Facility practice	

	22 TAC §77.9
Operating a facility without a certificate of registration or with an expired registration	CA §201.312 22 TAC §§73.2(a), 73.3(f), 73.4(a)
Practicing in a facility without a certificate of registration or with an expired registration	CA §201.312 22 TAC §73.2(k)
Unauthorized disclosure of patient records	22 TAC §77.7 CA §§201.402, 201.405
Overtreating/overcharging a patient	22 TAC §78.1(a)(4) HPCA §101.203
Publicity Misleading Claims Deception or Fraud in Practice Advertising statement – false, tends to mislead, or deceive public	22 TAC §§77.2, 77.4 CA §201.502(a)(2), (9), (11); HPCA §101.201
CATEGORY III. 1st Offense: \$250 2nd Offense: \$500* 3rd Offense: \$1000* *and/or suspension	
Violation	Reference
Failure to furnish patient records Overcharging for copies of patient records	22 TAC §77.7 CA §201.405(f)
Failure to disclose charges to patient	22 TAC §§78.1(a)(6), 77.3(a) HPCA §101.202
Failure to maintain patient records	22 TAC §77.8
CATEGORY IV. 1st Offense: \$250 2nd Offense: \$500 3rd Offense: \$1000	
Violation	Reference
Failure to display public interest information, current facility registration or current annual license renewal	22 TAC §78.7
Failure to complete CRT continuing education	22 TAC §74.2(i)
Failure to comply with Spinal Screenings requirements	22 TAC §78.17
CATEGORY V. 1st Offense: \$250 2nd Offense: \$400 3rd Offense: \$500	
Violation	Reference
Failure to report change of address	22 TAC §75.1
Failure to report change of facility address/ownership	22 TAC §73.4(c)
Failure to report <i>locum tenens</i> information	22 TAC §75.2(b)
Use of the term "physician," "chiropractic physician"	CA §201.502(a)(22)
Failure to use "chiropractor," "D.C." in advertising	22 TAC §§77.2 (f); 78.1(a)(2)

Figure 22 TAC §102.1

SCHEDULE OF FEES

	Board Fee	Professional Fee	Texas Online	Peer Assistance	Patient Protection	83rd Leg - HB 3201	Total Fee
DENTIST							
Application by Exam	\$215.00	\$200.00	<u>\$5.00</u>	<u>\$7.00</u>	\$5.00	\$55.00	\$475.00 <u>\$287.00</u>
Annual Renewal	\$150.00	\$200.00	\$10.00 <u>\$4.00</u>	\$9.00 <u>\$7.00</u>	\$1.00	\$55.00	\$425.00 <u>\$217.00</u>
Annual Renewal - Late 1 to 90 days	\$225.00	\$200.00	\$10.00 <u>\$4.00</u>	\$9.00 <u>\$7.00</u>	\$1.00	\$55.00	\$500.00 <u>\$292.00</u>
Annual Renewal - Late 90 to 365 days	\$300.00	\$200.00	\$10.00 <u>\$4.00</u>	\$9.00 <u>\$7.00</u>	\$1.00	\$55.00	\$575.00 <u>\$367.00</u>
Licensure by Credentials	\$2,800.00		<u>\$5.00</u>	<u>\$7.00</u>	<u>\$5.00</u>	\$55.00	\$2855.00 <u>\$2872.00</u>
Temporary Licensure by Credentials	\$750.00		<u>\$5.00</u>	<u>\$7.00</u>	<u>\$5.00</u>	<u>\$55.00</u>	\$750.00 <u>\$822.00</u>
Provisional License	\$100.00						\$100.00
Faculty Initial Application	\$115.00		<u>\$4.00</u>	<u>\$7.00</u>	\$5.00	<u>\$55.00</u>	\$120.00 <u>\$186.00</u>
Faculty Annual Renewal	\$95.00		\$10.00 <u>\$3.00</u>	\$9.00 <u>\$7.00</u>	\$1.00	<u>\$55.00</u>	\$115.00 <u>\$161.00</u>
Faculty Annual Renewal - Late 1 to 90 days	\$142.50		\$10.00 <u>\$3.00</u>	\$9.00 <u>\$7.00</u>	\$1.00	<u>\$55.00</u>	\$162.50 <u>\$208.50</u>
Faculty Annual Renewal - Late 90 to 365 days	\$190.00		\$10.00 <u>\$3.00</u>	\$9.00 <u>\$7.00</u>	\$1.00	<u>\$55.00</u>	\$210.00 <u>\$256.00</u>
Conversion Fee - Faculty to Full Privilege	\$50.00						\$50.00
Nitrous Oxide and Level 1 Anesthesia Application	\$32.00						\$32.00
Nitrous Oxide and Level 1 Anesthesia Annual Renewal	\$10.00						\$10.00
Level 2 thru Level 4 Anesthesia Application	\$60.00						\$60.00
Level 2 thru Level 4 Anesthesia Annual Renewal	\$10.00						\$10.00
Portability of Anesthesia Level 3 thru Level 4 Application	\$120.00						\$120.00
Application to Reactivate a Retired License	\$75.00						\$75.00
Reinstatement of a Canceled Dental License	\$850.00 <u>\$434.00</u>						\$850.00 <u>\$434.00</u>
Duplicate License / Renewal	\$25.00						\$25.00

	Board Fee	Professional Fee	Texas Online	Peer Assistance	Patient Protection	83rd Leg - HB 3201	Total Fee
Conversion Fee - Full Privilege to Faculty	\$50.00						\$50.00
Conversion Fee - Temporary Licensure by Credentials to Full Privilege	\$2,050.00		<u>\$5.00</u>	<u>\$7.00</u>	<u>\$5.00</u>	\$55.00	\$2105.00 <u>\$2122.00</u>
DENTAL HYGIENIST							
Application by Exam	\$115.00		<u>\$4.00</u>	<u>\$2.00</u>	\$5.00		\$120.00 <u>\$126.00</u>
Annual Renewal	\$100.00		\$6.00 <u>\$3.00</u>	\$2.00	\$1.00		\$109.00 <u>\$106.00</u>
Annual Renewal - Late 1 to 90 days	\$150.00		\$6.00 <u>\$3.00</u>	\$2.00	\$1.00		\$159.00 <u>\$156.00</u>
Annual Renewal - Late 90 to 365 days	\$200.00		\$6.00 <u>\$3.00</u>	\$2.00	\$1.00		\$209.00 <u>\$206.00</u>
Licensure by Credentials	\$630.00		<u>\$4.00</u>	<u>\$2.00</u>	<u>\$5.00</u>		\$630.00 <u>\$641.00</u>
Temporary Licensure by Credentials	\$220.00		<u>\$4.00</u>	<u>\$2.00</u>	<u>\$5.00</u>		\$220.00 <u>\$231.00</u>
Faculty Initial Application	\$115.00		<u>\$4.00</u>	<u>\$2.00</u>	\$5.00		\$120.00 <u>\$126.00</u>
Faculty Annual Renewal	\$83.00		\$6.00 <u>\$3.00</u>	\$2.00	\$1.00		\$92.00 <u>\$89.00</u>
Faculty Annual Renewal - Late 1 to 90 days	\$124.50		\$6.00 <u>\$3.00</u>	\$2.00	\$1.00		\$133.50 <u>\$130.50</u>
Faculty Annual Renewal - Late 90 to 365 days	\$166.00		\$6.00 <u>\$3.00</u>	\$2.00	\$1.00		\$175.00 <u>\$172.00</u>
Conversion Fee - Faculty to Full Privilege	\$50.00						\$50.00
Application to Reactivate a Retired License	\$75.00						\$75.00
Reinstatement of a Canceled Dental Hygiene License	\$218.00 <u>\$212.00</u>						\$218.00 <u>\$212.00</u>
Duplicate License / Renewal	\$25.00						\$25.00
Nitrous Oxide Cons Sed Monitoring Application	\$12.00						\$12.00
Nitrous Oxide Monitoring Duplicate Certificate	\$10.00						\$10.00
Conversion Fee - Full Privilege to Faculty	\$50.00						\$50.00
Conversion Fee - Temporary Licensure by Credentials to Full Privilege	\$410.00		<u>\$4.00</u>	<u>\$2.00</u>	<u>\$5.00</u>		\$410.00 <u>\$421.00</u>

	Board Fee	Professional Fee	Texas Online	Peer Assistance	Patient Protection	83rd Leg - HB 3201	Total Fee
DENTAL ASSISTANT							
							\$0.00
Initial Application	\$31.00				\$5.00		\$36.00
Annual Renewal	\$29.00		\$2.00		\$1.00		\$32.00
Annual Renewal - Late 1 to 90 days	\$43.50		\$2.00		\$1.00		\$46.50
Annual Renewal - Late 90 to 365 days	\$58.00		\$2.00		\$1.00		\$61.00
Duplicate License / Renewal	\$25.00						\$25.00
Pit and Fissure Sealant Application	\$30.00						\$30.00
Pit and Fissure Sealant Renewal	\$18.00						\$18.00
Duplicate Pit Fissure Certificate	\$15.00						\$15.00
Nitrous Oxide Cons Sed Monitoring Application	\$12.00						\$12.00
Nitrous Oxide Monitoring Duplicate Certificate	\$10.00						\$10.00
Coronal Polishing Application	\$12.00						\$12.00
Duplicate Coronal Polishing Certificate	\$10.00						\$10.00
DENTAL LABORATORIES							
Application	\$120.00				\$5.00		\$125.00
Annual Renewal	\$131.00		\$3.00 \$4.00		\$1.00		\$135.00 \$136.00
Annual Renewal - Late 1 to 90 days	\$196.50		\$3.00 \$4.00		\$1.00		\$200.50 \$201.50
Annual Renewal - Late 90 to 365 days	\$262.00		\$3.00 \$4.00		\$1.00		\$266.00 \$267.00
Duplicate Certificate	\$25.00						\$25.00
OTHER							
Mobile Application	\$120.00						\$120.00

	Board Fee	Professional Fee	Texas Online	Peer Assistance	Patient Protection	83rd Leg - HB 3201	Total Fee
Annual Mobile Renewal	\$60.00						\$60.00
Duplicate Certificate Mobile Certificate	\$15.00						\$15.00
Dentist Intern / Resident Prescription Privileges	\$50.00						\$50.00
Dental Assistant Course Provider	\$100.00						\$100.00
Jurisprudence	\$55.00	\$54.00					\$55.00 \$54.00
Licensure Verification without Seal	\$4.00						\$4.00
Licensure Verification with Seal	\$9.00						\$9.00
Criminal History Letter	\$25.00						\$25.00
Printed Copy - Rules and Regulations	\$20.00						\$20.00
Printed Copy - TX Occupations Code - Dental Practice Act	\$15.00						\$15.00
Printed Consumer Signage	\$5.00						\$5.00
Board Scores	\$10.00						\$10.00

Organ Dose Weighting Factors

<u>Organ or Tissue</u>	<u>w_T</u>
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30 ¹
Whole body	1.00 ²

1. The value 0.30 results from 0.06 for each of five remainder organs, excluding the skin and the lens of the eye, that receive the highest doses.
2. For the purpose of weighting the external whole body dose (for adding it to the internal dose) a single weighting factor (w_T), w_T =1.0, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

Figure: 30 TAC §336.357(z)

Category 1 and Category 2 Threshold				
Radioactive Material	Category 1 (TBq)	Category 1 (Ci)	Category 2 (TBq)	Category 2 (Ci)
Americium-241	60	1,620	0.6	16.2
Americium-241/Be	60	1,620	0.6	16.2
Californium-252	20	540	0.2	5.40
Cobalt-60	30	810	0.3	8.10
Curium-244	50	1,350	0.5	13.5
Cesium-137	100	2,700	1	27.0
Gadolinium-153	1,000	27,000	10	270
Iridium-192	80	2,160	0.8	21.6
Plutonium-238	60	1,620	0.6	16.2
Plutonium-239/Be	60	1,620	0.6	16.2
Promethium-147	40,000	1,080,000	400	10,800
Radium-226	40	1,080	0.4	10.8
Selenium-75	200	5,400	2	54.0
Strontium-90	1,000	27,000	10	270
Thulium-170	20,000	540,000	200	5,400
Ytterbium-169	300	8,100	3	81.0

Note: Calculations Concerning Multiple Sources or Multiple Radionuclides

The "sum of fractions" methodology for evaluating combinations of multiple sources or multiple radionuclides is to be used in determining whether a location meets or exceeds the threshold and is thus subject to the requirements of this section.

I. If multiple sources of the same radionuclide and/or multiple radionuclides are aggregated at a location, the sum of the ratios of the total activity of each of the radionuclides must be determined to verify whether the activity at the location is less

than the category 1 or category 2 thresholds of Table 1, as appropriate. If the calculated sum of the ratios, using the equation below, is greater than or equal to 1.0, then the applicable requirements of this section apply.

II. First determine the total activity for each radionuclide from Table 1. This is done by adding the activity of each individual source, material in any device, and any loose or bulk material that contains the radionuclide. Then use the equation below to calculate the sum of the ratios by inserting the total activity of the applicable radionuclides from Table 1 in the numerator of the equation and the corresponding threshold activity from Table 1 in the denominator of the equation. Calculations must be performed in metric values (i.e., TBq) and the numerator and denominator values must be in the same units.

R_1 = total activity for radionuclide 1

R_2 = total activity for radionuclide 2

R_N = total activity for radionuclide n

AR_1 = activity threshold for radionuclide 1

AR_2 = activity threshold for radionuclide 2

AR_N = activity threshold for radionuclide n

$$\sum_i^n \left[\frac{R_1}{AR_1} + \frac{R_2}{AR_2} + \frac{R_n}{AR_n} \right]$$

ANNEX A

TLLRWDCC §675.23—IMPORTATION FORM

TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION APPLICATION FOR IMPORTATION OF NON-PARTY LOW-LEVEL RADIOACTIVE WASTE (NOTE: PURSUANT TO TEXAS HEALTH AND SAFETY CODE, §401.207(j), THIS PETITION MUST BE COMPLETED BY APPROPRIATE REPRESENTATIVES OF THE DEPARTMENT OF DEFENSE OR THE GENERATOR OF THE WASTE UNLESS THE GENERATOR IS A SMALL QUANTITY GENERATOR AS DEFINED IN 31 TAC §675.20(19), IN WHICH CASE THE PETITION MAY BE SUBMITTED BY AN APPROPRIATELY LICENSED BROKER) (Article III, Sec. 3.05(7) of the Compact)

I. Applicant Information:

Entity Name: _____

Contact Person, Title: _____

Phone: _____

Email: _____

Website: _____

Business Address: _____

Mailing Address: _____

Is applicant:

- Generator
- Broker
 - Licensed Waste Processor
 - Licensed Waste Collector
- Department of Defense

II. Generator Specifications:

A. Generator type:

- Industrial
- Academic/Research
- Medical
- Utility
- Government

B. Is waste from a "small quantity generator"?

- Yes
- No

III. Agreement Period:

Import applications generally will be granted only in single fiscal-year increments. If you are seeking a term that would extend beyond the end of a current fiscal year, please explain the unusual circumstances that would justify a deviation from this general rule?

IV. Waste proposed for importation:

Waste Volume (Cubic Feet): _____

Waste Radioactivity (Curies): _____

Waste Classification:

- Class A,
- Class B, and/or
- Class C

Waste Form

- Stable
- Unstable

Does the proposed waste consist solely of sealed sources?

- No.
- Yes.

Compact and/or unaffiliated state, territory, possession, or district of the United States where the waste was generated (please list):

Waste Description: _____

V. Compliance

Does Applicant have any unresolved violation(s), complaint(s), unpaid fee(s), or past due report(s) with the Texas Low-Level Radioactive Waste Disposal Compact Commission?

- No.
- Yes. Please explain and attach applicable documents.

Does Applicant have any unresolved violation(s), complaint(s), unpaid fee(s), or past due reports associated with radioactive waste receipt, storage, handling, management, processing, or transportation pending with any other regulatory agency with jurisdiction to regulate radioactive material including, without limitation, the Texas Commission on Environmental Quality (TCEQ)?

- No.
- Yes. Please explain and attach applicable documents.

VI. Certifications

Applicant hereby certifies* the following:

- The information provided herein is complete, accurate, and correct.
- The waste proposed for importation is not waste of international origin.
- The low-level radioactive waste for which this Import Application is submitted will be packaged and shipped in accordance with applicable state and federal regulations and is acceptable for disposal at the Compact Facility.
- The person submitting this Import Application is authorized by the Applicant to commit Applicant to each and every obligation and condition set forth herein and in the Agreement for Importation of Non-Party Compact Waste. A copy of a written document containing such authorization must be attached to this Import Application.
- Applicant has delivered to the specified disposal facility and TCEQ a copy of this Application for Importation of Compact Waste (along with any supplement or amendment thereto).

* If any box is left unchecked, the Commission will assume that requirement was not met.

VII. Authorized Signatory:

Print or type name

Signature

Title

Date

VIII. ATTACHMENTS:

(Attachments should include all applicable licenses, authorizations, and other materials needed or useful to fully explain the Import Application.)

ANNEX B

TERMSHEET

(Minimum terms that must be addressed in any Waste Importation Agreement offered to the Texas Low-Level Radioactive Waste Disposal Compact Commission in connection with an Application to Import Waste).

- A. The proposed beginning and ending dates.
- B. Compliance with all applicable federal and state laws and rules including, without limitation, §8.03 of the Compact as compiled in Texas Health and Safety Code (THSC), Chapter 403.
- C. Liability for applicants' own acts, omissions, conduct, and relationships in accordance with applicable law.
- D. Acknowledgement that the Commission under any circumstances may amend or revoke the agreement with prior notice and that under emergency circumstances the Commission may suspend authorization to import with such notice as it is able to give under the circumstances.
- E. Agreement shall not be assignable or transferable to any other person.
- F. Agreement is subject to receipt by the Compact Facility Operator and the Commission of written certification from the Texas Commission on Environmental Quality (TCEQ) prior to the acceptance of Generator's Non-Party Compact Waste that the waste to be imported is authorized for disposal under the Compact Facility license.
- G. A description of the characteristics of the waste proposed for importation including (but not limited to) volume, type, physical form, total radioactivity, and radionuclide-specific activities.
- H. A representation by the applicant that it has disclosed:

- (1) The existence of unresolved violations pending against the applicant with any other regulatory agency with jurisdiction to regulate radioactive material.
 - (2) The existence of any unresolved violation(s), complaint(s), unpaid fee(s), or past due report(s) that the applicant has with the Commission.
 - (3) The existence of any unresolved violation(s), complaint(s), unpaid fee(s), or past due reports that the applicant has with any other regulatory body, including, without limitation, the TCEQ.
- I. An acknowledgement that a misrepresentation with respect to an item listed in H may result in the cancellation of the agreement.
 - J. The obligation to report immediately to the Commission any allegation of the violation of any law, rule, or regulation related to the storage, shipment, or treatment of any form of radioactive material.
 - K. A provision acknowledging the right of the Commission to audit or cause to be audited compliance with the agreement.
 - L. Agreement to comply to the extent applicable with the rules related to commingling adopted by the TCEQ in coordination with the Commission pursuant to THSC, §401.207(k).
 - M. An affirmation that no waste of international origin shall ever be included in the materials to be imported to the Compact Facility.
 - N. Any other matter required by 31 TAC §675.23 to be included in the agreement.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Agricultural Surplus Grant Request for Applications

Statement of Purpose.

Pursuant to the Texas Agriculture Code Chapter 21, the Texas Department of Agriculture (TDA) submits this request for applications (RFA) for projects, to be completed during the period from October 1, 2015 through September 30, 2017, that collect and distribute surplus agricultural products to food banks and other charitable organizations that serve needy or low-income individuals.

Eligibility.

Grant applications will be accepted from non-profit organizations that have been determined by the Internal Revenue Service (IRS) to be exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code. These organizations must be established and operate for religious, charitable or educational purposes and not for financial gain. Additionally, these organizations must not distribute any of their income to their members, directors or officers. Organizations must have at least 5 years of experience coordinating a statewide network of food banks and charitable organizations that serve each of the 254 counties in this state.

For purposes of this application, the term "agricultural product" means an agricultural, apicultural, horticultural, or vegetable food product, either in its natural or processed state, for human consumption, including: (1) fish or other aquatic species; (2) livestock, a livestock product, or a livestock by-product; (3) poultry, a poultry product, or a poultry by-product; (4) wildlife processed for food or by-products; and (5) fruit, vegetables and grains. In addition to agricultural products grown in excess of a producer's needs, the term "surplus" includes any products not meeting that definition that are made available by a producer for distribution to food banks and other charitable organizations that serve the needy or low-income individuals.

TDA will follow §2155.444 of the Texas Government Code, relating to preference to Texas and United States products and Texas services, in making awards under this request for applications.

Funding Parameters.

Awards are subject to the availability of funds. If funds are not appropriated or collected for this purpose, Applicants will be informed accordingly.

Applications are limited to a total of \$5.9 million for the two-year period. Funding is limited to the operation of a program that coordinates the collection and transportation of surplus agricultural products to a statewide network of food banks or other charitable organizations that provide food to needy or low-income individuals.

Application Requirements.

Application and information can be downloaded from the Grants Office section under the Grants and Services tab at www.TexasAgriculture.gov.

Submission Information.

In order to ensure applicants are given ample time to submit applications in accordance with the revised requirements, the deadline has been extended for this RFA. Only materials actually received by TDA by 5:00 p.m. on September 9, 2015 will be reviewed as part of the proposal.

For questions regarding submission of the proposal and/or TDA requirements, please contact TDA's Grants Office at (512) 463-6695, or by email at Grants@TexasAgriculture.gov.

TRD-201503292

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Filed: August 21, 2015

Cancer Prevention and Research Institute of Texas

Request for Applications C-16-ESTCO-1 Established Company Product Development Award (Revised 8/18/2015)

This award mechanism seeks to fund the development of innovative products, services, and infrastructure with significant potential impact on patient care. Companies must have at least one round of professional institutional investment, and must be headquartered in Texas. The proposed project must further the development of new products for the diagnosis, treatment, or prevention of cancer; must establish infrastructure that is critical to the development of a robust industry; or must fill a treatment or research gap.

Maximum Award: \$20M; Maximum duration of 36 months.

A detailed Request For Applications (RFA) is available online at www.cpr.it.state.tx.us. Applications will be accepted beginning at 7:00 a.m. Central Time on August 3, 2015, through 3:00 p.m. Central Time on September 16, 2015, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). CPRIT will not accept applications that are not submitted via the CPRIT Application Receipt System.

TRD-201503379

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Filed: August 24, 2015

Request for Applications C-16-NEWCO-1 New Company Product Development Award (Revised 8/18/2015)

This award mechanism seeks to support early-stage "start-up" companies in the development of new products for the diagnosis, treatment, or prevention of cancer. Companies must have a significant presence in Texas or be willing to relocate to Texas. To be eligible for the three (3) year funding award, a company applicant must be an early-stage

start-up company with no previous rounds of professional institutional investment (*i.e.*, has not yet received Series A financing.)

Award: Maximum \$20M; Maximum duration of 36 months.

A detailed Request For Applications (RFA) is available online at www.cpr.it.state.tx.us. Applications will be accepted beginning at 7:00 a.m. Central Time on August 3, 2015, through 3:00 p.m. Central Time on September 16, 2015, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). CPRIT will not accept applications that are not submitted via the CPRIT Application Receipt System.

TRD-201503381

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Filed: August 24, 2015



Request for Applications C-16-RELCO-1 Company Relocation Product Development Awards (Revised 8/18/2015)

This award mechanism seeks to support companies or limited partnerships that are willing to relocate to Texas in developing new products for the diagnosis, treatment, or prevention of cancer; to establish infrastructure that is critical to the development of a robust industry; or to fill a treatment or research gap. Companies must have at least one round of professional institutional investment.

Award: Maximum amount \$20M; Maximum duration of 36 months.

A detailed Request For Applications (RFA) is available online at www.cpr.it.state.tx.us. Applications will be accepted beginning at 7:00 a.m. Central Time on August 3, 2015, through 3:00 p.m. Central Time on September 16, 2015, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). CPRIT will not accept applications that are not submitted via the CPRIT Application Receipt System.

TRD-201503382

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Filed: August 24, 2015



Comptroller of Public Accounts

Notice of Contract Awards

Pursuant to Chapter 403, Chapter 2254, Subchapter A of the Texas Government Code, and Chapter 111, Subchapter A, §111.0045 of the Texas Tax Code, Texas Comptroller of Public Accounts ("Comptroller") announces this notice of contract awards.

Comptroller's Request for Qualifications 212m ("RFQ") related to these contract awards was published in the April 10, 2015, issue of *Texas Register* (40 TexReg 2104).

The examiners will provide Professional Contract Examination Services as authorized by Subchapter A, Chapter 111, Section 111.0045 of the Texas Tax Code as described in the Comptroller's RFQ.

Comptroller announces that eleven (11) contracts were awarded as follows:

Antonio V. Concepcion, 9227 Bristlebrook Drive, Houston, Texas 77083. Examinations will be assigned in \$60,000 - \$90,000 examination packages per individual examiner but no contract examiner

shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2015 through August 31, 2016 with two (2) one (1) year options to renew.

Cindy H. Coats, CPA, 212 W. Legend Oaks Drive, Georgetown, Texas 78628-5003. Examinations will be assigned in \$60,000 - \$90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2015 through August 31, 2016 with two (2) one (1) year options to renew.

Cynthia Alvarez, 3820 Ashbury Lane, Bedford, Texas 76021. Examinations will be assigned in \$60,000 - \$90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2015 through August 31, 2016 with two (2) one (1) year options to renew.

Delores A. Nornberg, 7518 Briccesco Drive, Corpus Christi, Texas 78414. Examinations will be assigned in \$60,000 - \$90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2015 through August 31, 2016 with two (2) one (1) year options to renew.

Janet Spies dba Texas Tax Training & Consulting, 7208 Curpin Cove, Austin, Texas 78754. Examinations will be assigned in \$60,000 - \$90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2015 through August 31, 2016 with two (2) one (1) year options to renew.

Lee A. Hopes & Associates, Inc., 10415 Antelope Alley, Missouri City, Texas 77459. Examinations will be assigned in \$60,000 - \$90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2015 through August 31, 2016 with two (2) one (1) year options to renew.

Mauro Longoria, 410 Leopard Claw, San Antonio, Texas 78251. Examinations will be assigned in \$60,000 - \$90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2015 through August 31, 2016 with two (2) one (1) year options to renew.

Sam W. Armstrong, P.C., 27403 Manor Falls Lane, Fulshear, Texas 77441. Examinations will be assigned in \$60,000 - \$90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2015 through August 31, 2016 with two (2) one (1) year options to renew.

Tamara Andrus Koenings, 15712 Spillman Ranch Loop, Austin, Texas 78738-6576. Examinations will be assigned in \$60,000 - \$90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2015 through August 31, 2016 with two (2) one (1) year options to renew.

Taygor Associates, LLC, 1124 Native Garden Cove, Round Rock, Texas 78681. Examinations will be assigned in \$60,000 - \$90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2015 through August 31, 2016 with two (2) one (1) year options to renew.

Texas Tax Consulting Group, L.C., 3216 Reid Drive, Suite E, Corpus Christi, Texas 78404. Examinations will be assigned in \$60,000 - \$90,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2015 through August 31, 2016 with two (2) one (1) year options to renew.

The eleven (11) contracts above are the final awards that the Comptroller will make under this RFQ.

TRD-201503425

Laurie Velasco

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: August 26, 2015



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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/31/15 - 09/06/15 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/31/15 - 09/06/15 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201503393

Leslie Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: August 25, 2015



Texas Council for Developmental Disabilities

Request for Proposals: Accessible Transportation Summits

The (TCDD) announces the availability of funds for one organization to plan and host at least three summits for organizations and individuals who will actively collaborate with others in their community to address local transportation issues; and to provide support for at least two collaborative community groups to create a measurable increase in the percent of people with developmental disabilities in a pre-defined area who report they have better access to the transportation they need.

TCDD has approved funding for one organization for up to five years. The maximum amount of funding to be provided is: up to \$150,000 per year, for each of the first three years; up to \$125,000 for fourth year; and up to \$100,000 for the fifth year. Funds available for these projects 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 TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

This Request for Proposals (RFP) and others released by TCDD may be obtained at www.DDSuite.org. Proposals for this grant and all forms must be submitted using DD Suite. More information about TCDD may be obtained through TCDD's website at www.tcdd.texas.gov/. All questions pertaining to this RFP should be directed in writing to Joanna Cordry, Planning Coordinator, via email at Joanna.Cordry@tcdd.texas.gov or telephone at (512) 437-5410.

Deadline: Proposals must be submitted through www.DDSuite.org by October 28, 2015. Proposals will not be accepted after the due date. Organizations unfamiliar with DD Suite or that need assistance using DD Suite may receive technical support by emailing Joanna.Cordry@TCDD.texas.gov or calling (512) 437-5410. Signing up for an account on DD Suite should be done as early in the process as possible. User errors that result in a failed or late submission will not be grounds for an exception to the deadline.

TRD-201503439

Beth Stalvey

Executive Director

Texas Council for Developmental Disabilities

Filed: August 26, 2015



Request for Proposals: Leadership Development and Advocacy Training

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for up to four organizations to provide leadership development and advocacy skills training to individuals with disabilities; family members of people with disabilities; and other interested community members if space permits.

TCDD has approved a maximum funding amount of \$75,000 per year, per project, for up to five years. Funds available for these projects 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 TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

This Request for Proposals (RFP) and others released by TCDD may be obtained at www.DDSuite.org. Proposals for this grant and all forms must be submitted using DD Suite. More information about TCDD may be obtained through TCDD's website at www.tcdd.texas.gov/. All questions pertaining to this RFP should be directed in writing to Joanna Cordry, Planning Coordinator, via email at Joanna.Cordry@tcdd.texas.gov or telephone at (512) 437-5410.

Deadline: Proposals must be submitted through www.DDSuite.org by October 28, 2015. Proposals will not be accepted after the due date. Organizations unfamiliar with DD Suite or that need assistance using DD Suite may receive technical support by emailing Joanna.Cordry@TCDD.texas.gov or calling (512) 437-5410. Signing up for an account on DD Suite should be done as early in the process

as possible. User errors that result in a failed or late submission will not be grounds for an exception to the deadline.

TRD-201503430

Beth Stalvey

Executive Director

Texas Council for Developmental Disabilities

Filed: August 26, 2015



Request for Proposals: Stakeholder Training on Guardianship Alternatives

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for an organization to develop and provide training to promote the informed use of supported decision-making, services, supports, and existing alternatives to guardianship that assist individuals to make their own decisions, maintain civil rights, and reduce the need for guardianship.

TCDD has approved a maximum funding amount of \$40,000 per year for up to three years. Funds available for these projects 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 TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

This Request for Proposals (RFP) and others released by TCDD may be obtained at www.DDSuite.org. Proposals for this grant and all forms must be submitted using DD Suite. More information about TCDD may be obtained through TCDD's website at www.tcdd.texas.gov/. All questions pertaining to this RFP should be directed in writing to Joanna Cordry, Planning Coordinator, via email at Joanna.Cordry@tcdd.texas.gov or telephone at (512) 437-5410.

Deadline: Proposals must be submitted through www.DDSuite.org by November 2, 2015. Proposals will not be accepted after the due date. Organizations unfamiliar with DD Suite or that need assistance using DD Suite may receive technical support by emailing Joanna.Cordry@TCDD.texas.gov or calling (512) 437-5410. This should be done as early in the process as possible. User errors that result in a failed or late submission will not be grounds for an exception to the deadline.

TRD-201503432

Beth Stalvey

Executive Director

Texas Council for Developmental Disabilities

Filed: August 26, 2015



Texas Education Agency

Request for Applications (RFA) Concerning Generation Twenty Open-Enrollment Charter Application (RFA #701-15-106)

Filing Date. August 26, 2015

Filing Authority. Texas Education Code, §12.101 and §12.152

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-15-106 from

eligible entities to operate open-enrollment charter schools. Eligible entities include public institutions of higher education, private or independent institutions of higher education, organizations exempt from taxation under the Internal Revenue Code of 1986 (26 United States Code, §501(c)(3)), or governmental entities. At least one member of the governing board of the group requesting the charter must attend one required applicant information session. Sessions are scheduled for Wednesday, September 16, 2015, and Tuesday, September 22, 2015, in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494. Failure to attend one of the sessions will disqualify an applicant from submitting a complete application for an open-enrollment charter.

Description. The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter school offers flexibility and choice for educators, parents, and students. An approved open-enrollment charter school may be located in a facility of a commercial or nonprofit entity or in a school district facility. If the open-enrollment charter school is to be located in a school district facility, it must be operated under the terms established by the board of trustees or governing body of the school district in an agreement governing the relationship between the charter school and the district.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade levels as provided by the charter. An open-enrollment charter school must be non-sectarian in its programs, admissions, policies, employment practices, and all other operations and may not be affiliated with a sectarian school or religious institution. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in the Texas Education Code (TEC), §12.1056, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school or charter holder is immune from liability and suit to the same extent as a school district, and the employees and volunteers of the open-enrollment charter school or charter holder are immune from liability and suit to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability and suit to the same extent as a school district trustee. The TEC, §12.1057, states that an employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

Dates of Project. The completed application must be received by the TEA on or before 5:00 p.m. (Central Time), Monday, November 2, 2015, to be eligible for review.

Project Amount. The TEC, §12.106, specifies the following.

(a) A charter holder is entitled to receive for the open-enrollment charter school funding under the TEC, Chapter 42, equal to the greater of (1) the percentage specified by the TEC, §42.2516(i), multiplied by the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a-1)(2) and (3), as it existed on January 1, 2009, that would have been received by

the school during the 2009-2010 school year under the TEC, Chapter 42, as it existed on January 1, 2009, and an additional amount of the percentage specified by the TEC, §42.2516(i), multiplied by \$120 for each student in weighted average daily attendance; or (2) the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a), to which the charter holder would be entitled for the school under the TEC, Chapter 42, if the school were a school district without a tier one local share for purposes of the TEC, §42.253, and without any local revenue for purposes of the TEC, §42.2516.

(a-1) In determining funding for an open-enrollment charter school under subsection (a), adjustments under the TEC, §§42.102, 42.103, 42.104, and 42.105, are based on the average adjustment for the state.

(a-2) In addition to the funding provided by subsection (a), a charter holder is entitled to receive for the open-enrollment charter school enrichment funding under the TEC, §42.302, based on the state average tax effort.

The TEC, §12.106(a), as amended by Senate Bill 1, 82nd Texas Legislature, First Called Session, 2011, to be effective September 1, 2017, specifies that a charter holder is entitled to receive for the open-enrollment charter school funding under the TEC, Chapter 42, equal to the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a), to which the charter holder would be entitled for the school under the TEC, Chapter 42, if the school were a school district without a tier one local share for purposes of the TEC, §42.253.

The TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from the TEA or the commissioner of education in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. In addition, the TEC, Chapter 12, states that an open-enrollment charter school may not charge tuition and must admit students based on a lottery if more students apply for admission than can be accommodated. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. However, a charter school that specializes in the performing arts may require an applicant to audition. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, juvenile court adjudication, or a discipline problem under the TEC, Chapter 37, Subchapter A.

Selection Criteria. A complete description of selection criteria is included in the RFA.

The commissioner of education may approve open-enrollment charter schools as provided in the TEC, §12.101 and §12.152. There are currently 182 charters approved under the TEC, §12.101, and 5 charters approved under the TEC, §12.152. There is a cap of 240 charters approved under the TEC, §12.101, and no cap on the number of charters approved under the TEC, §12.152. The commissioner is scheduled to consider awards under RFA #701-15-106 in June 2016.

The commissioner may approve applicants to ensure representation of urban, suburban, and rural communities; various instructional settings; innovative programs; diverse student populations and geographic regions; and various eligible entities. The commissioner will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school. The commissioner may also consider the history of the sponsoring entity and the credentials and background of its board members. The commissioner may not award a charter to an entity that has within the preceding 10 years had a charter revoked, non-renewed, or surrendered. The com-

missioner will not consider an application submitted by an individual that is substantially related to an entity that has within the preceding 10 years had a charter revoked, non-renewed, or surrendered.

Requesting the Application. An application must be submitted under commissioner guidelines to be considered. A complete copy of the publication Generation Twenty-One Open-Enrollment Charter Application (RFA #701-15-106), which includes an application and procedures, may be obtained on the TEA website at http://tea.texas.gov/Texas_Schools/Charter_Schools/.

Further Information. For clarifying information about the open-enrollment charter school application, contact the Division of Charter School Administration, Texas Education Agency, at (512) 463-9575 or charterschools@tea.state.tx.us.

TRD-201503433

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: August 26, 2015



Request for Applications (RFA) Concerning Generation Twenty Open-Enrollment Charter Application (RFA #701-15-108)

Filing Date. August 26, 2015

Filing Authority. Texas Education Code, §12.101 and §12.152

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-15-108 from eligible out-of-state entities to operate open-enrollment charter schools. Eligible entities include public institutions of higher education, private or independent institutions of higher education, organizations exempt from taxation under the Internal Revenue Code of 1986 (26 United States Code, §501(c)(3)), or governmental entities. At least one member of the governing board of the group requesting the charter must attend one required applicant information session. Sessions are scheduled for Wednesday, September 16, 2015, and Tuesday, September 22, 2015, in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494. Failure to attend one of the sessions will disqualify an applicant from submitting a complete application for an open-enrollment charter.

Description. The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter school offers flexibility and choice for educators, parents, and students. An approved open-enrollment charter school may be located in a facility of a commercial or nonprofit entity or in a school district facility. If the open-enrollment charter school is to be located in a school district facility, it must be operated under the terms established by the board of trustees or governing body of the school district in an agreement governing the relationship between the charter school and the district.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade levels as provided by the charter. An open-enrollment charter school must be non-sectarian in its programs, admissions, policies, employment practices, and all other operations and may not be affiliated with a sectarian school or religious institution. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in the Texas Education Code (TEC), §12.1056, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school or charter holder is immune from liability and suit to the same extent as a school district, and the employees and volunteers of the open-enrollment charter school or charter holder are immune from liability and suit to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability and suit to the same extent as a school district trustee. The TEC, §12.1057, states that an employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

Dates of Project. The completed application must be received by the TEA on or before 5:00 p.m. (Central Time), Monday, November 2, 2015, to be eligible for review.

Project Amount. The TEC, §12.106, specifies the following.

(a) A charter holder is entitled to receive for the open-enrollment charter school funding under the TEC, Chapter 42, equal to the greater of (1) the percentage specified by the TEC, §42.2516(i), multiplied by the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a-1)(2) and (3), as it existed on January 1, 2009, that would have been received by the school during the 2009-2010 school year under the TEC, Chapter 42, as it existed on January 1, 2009, and an additional amount of the percentage specified by the TEC, §42.2516(i), multiplied by \$120 for each student in weighted average daily attendance; or (2) the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a), to which the charter holder would be entitled for the school under the TEC, Chapter 42, if the school were a school district without a tier one local share for purposes of the TEC, §42.253, and without any local revenue for purposes of the TEC, §42.2516.

(a-1) In determining funding for an open-enrollment charter school under subsection (a), adjustments under the TEC, §§42.102, 42.103, 42.104, and 42.105, are based on the average adjustment for the state.

(a-2) In addition to the funding provided by subsection (a), a charter holder is entitled to receive for the open-enrollment charter school enrichment funding under the TEC, §42.302, based on the state average tax effort.

The TEC, §12.106(a), as amended by Senate Bill 1, 82nd Texas Legislature, First Called Session, 2011, to be effective September 1, 2017, specifies that a charter holder is entitled to receive for the open-enrollment charter school funding under the TEC, Chapter 42, equal to the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a), to which the charter holder would be entitled for the school under the TEC, Chapter 42, if the school were a school district without a tier one local share for purposes of the TEC, §42.253.

The TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from the TEA or the commissioner of education in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. In addition, the TEC, Chapter 12, states that an open-enroll-

ment charter school may not charge tuition and must admit students based on a lottery if more students apply for admission than can be accommodated. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. However, a charter school that specializes in the performing arts may require an applicant to audition. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, juvenile court adjudication, or a discipline problem under the TEC, Chapter 37, Subchapter A.

Selection Criteria. A complete description of selection criteria is included in the RFA.

The commissioner of education may approve open-enrollment charter schools as provided in the TEC, §12.101 and §12.152. There are currently 182 charters approved under the TEC, §12.101, and 5 charters approved under the TEC, §12.152. There is a cap of 240s charters approved under the TEC, §12.101, and no cap on the number of charters approved under the TEC, §12.152. The commissioner is scheduled to consider awards under RFA #701-15-108 in June 2016.

The commissioner may approve applicants to ensure representation of urban, suburban, and rural communities; various instructional settings; innovative programs; diverse student populations and geographic regions; and various eligible entities. The commissioner will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school. The commissioner may also consider the history of the sponsoring entity and the credentials and background of its board members. The commissioner may not award a charter to an entity that has within the preceding 10 years had a charter revoked, non-renewed, or surrendered. The commissioner will not consider an application submitted by an individual that is substantially related to an entity that has within the preceding 10 years had a charter revoked, non-renewed, or surrendered.

Requesting the Application. An application must be submitted under commissioner guidelines to be considered. A complete copy of the publication Generation Twenty-One Open-Enrollment Charter Application (RFA #701-15-108), which includes an application and procedures, may be obtained on the TEA website at http://tea.texas.gov/Texas_Schools/Charter_Schools/.

Further Information. For clarifying information about the open-enrollment charter school application, contact the Division of Charter School Administration, Texas Education Agency, at (512) 463-9575 or charterschools@tea.state.tx.us.

TRD-201503434
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: August 26, 2015



Request for Applications (RFA) Concerning Public College or University Open-Enrollment Charter Guidelines and Application (RFA #701-15-109)

Filing Date. August 26, 2015

Filing Authority. Texas Education Code, §12.152

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-15-109 from eligible entities to operate open-enrollment charter schools. Eligible entities are limited to Texas public colleges or universities and Texas public junior colleges.

Representatives from the institution applying for a charter must attend one required applicant information session. Sessions are scheduled for Wednesday, September 16, 2015, and Tuesday, September 22, 2015, in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494. Failure to attend one of the sessions will disqualify an applicant from submitting a complete application for an open-enrollment charter. Representatives from the business, educational, financial, and legal offices of the college or university and any other persons involved in the design and planning of the proposed school should attend.

Description. The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter school offers flexibility and choice for educators, parents, and students. As stated in the Texas Education Code (TEC), §12.152, in matters related to location, a college, university, or junior college open-enrollment charter school may operate on a campus of the college, university, or junior college or at another location in any county in the state as deemed appropriate by the commissioner of education after considering the number of existing charters in the area and the needs of the community.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade levels as provided by the charter. A charter school must be non-sectarian in its programs, admissions, policies, employment practices, and all other operations and may not be affiliated with a sectarian school or religious institution. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in the TEC, §12.1056, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school or charter holder is immune from liability and suit to the same extent as a school district, and the employees and volunteers of the open-enrollment charter school or charter holder are immune from liability and suit to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability and suit to the same extent as a school district trustee. The TEC, §12.1057, states that an employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

Dates of Project. The completed application must be received by the TEA on or before 5:00 p.m. (Central Time), Monday, November 2, 2015, to be eligible for review.

Project Amount. The TEC, §12.106, specifies the following.

(a) A charter holder is entitled to receive for the open-enrollment charter school funding under the TEC, Chapter 42, equal to the greater of (1) the percentage specified by the TEC, §42.2516(i), multiplied by the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a-1)(2) and (3), as they existed on January 1, 2009, that would have been received for the school during the 2009-2010 school year under the TEC, Chapter 42, as it existed on January 1, 2009, and an additional amount of the

percentage specified by the TEC, §42.2516(i), multiplied by \$120 for each student in weighted average daily attendance; or (2) the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a), to which the charter holder would be entitled for the school under the TEC, Chapter 42, if the school were a school district without a tier one local share for purposes of the TEC, §42.253, and without any local revenue for purposes of the TEC, §42.2516.

(a-1) In determining funding for an open-enrollment charter school under subsection (a), adjustments under the TEC, §§42.102, 42.103, 42.104, and 42.105, are based on the average adjustment for the state.

(a-2) In addition to the funding provided by subsection (a), a charter holder is entitled to receive for the open-enrollment charter school enrichment funding under the TEC, §42.302, based on the state average tax effort.

The TEC, §12.106(a), as amended by Senate Bill 1, 82nd Texas Legislature, First Called Session, 2011, to be effective September 1, 2017, specifies that a charter holder is entitled to receive for the open-enrollment charter school funding under the TEC, Chapter 42, equal to the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a), to which the charter holder would be entitled for the school under the TEC, Chapter 42, if the school were a school district without a tier one local share for purposes of the TEC, §42.253.

The TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from the TEA or the commissioner of education in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. In addition, the TEC, Chapter 12, states that an open-enrollment charter school may not charge tuition and must admit students based on a lottery if more students apply for admission than can be accommodated. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. However, a charter school that specializes in the performing arts may require an applicant to audition. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, a juvenile court adjudication, or a discipline problem under the TEC, Chapter 37, Subchapter A.

Selection Criteria. A complete description of selection criteria is included in the RFA.

The commissioner of education may approve open-enrollment charter schools as provided in the TEC, §12.101 and §12.152. There is a cap of 240 charters approved under the TEC, §12.101, and no cap on the number of charters approved under the TEC, §12.152.

The commissioner of education will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school. The commissioner may not award a charter to an entity that has within the preceding 10 years had a charter revoked, non-renewed, or surrendered. The commissioner will not consider an application submitted by an individual that is substantially related to an entity that has within the preceding 10 years had a charter revoked, non-renewed, or surrendered.

Requesting the Application. An application must be submitted under commissioner guidelines to be considered. A complete copy of the publication *College or University Open-Enrollment Charter Application* (RFA #701-15-109), which includes an application and procedures, may be obtained on the TEA web-

site at http://tea.texas.gov/Texas_Schools/Charter_Schools/Charter_Schools_-_Subchapter_E_Charters/.

Further Information. For clarifying information about the open-enrollment charter school application, contact the Division of Charter School Administration, Texas Education Agency, at (512) 463-9575 or charterschools@tea.state.tx.us.

TRD-201503435

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: August 26, 2015



Employees Retirement System of Texas

Contract Award Announcement for the Audit of the Pharmacy Benefit Managers

This contract award notice is being submitted by the Employees Retirement System of Texas with regard to a contract awarded to Conduct a Full Contract Compliance and 100% Claim Accuracy Audit of the Pharmacy Benefit Managers under the Texas Employees Group Benefits Program ("Contract"). A Contract was awarded to:

The Burchfield Group, Inc.,

d/b/a The Burchfield Group Pharmacy Benefits Consultants, Inc.

1295 Northland Drive, Suite 350

Saint Paul, Minnesota 55120

The value of the Contract is estimated to be \$447,550.00 for the initial term. The Contract was executed on August 17, 2015 ("Effective Date"), and will be for an initial term beginning on the Effective Date through August 31, 2019, subject to the terms of the Contract.

TRD-201503245

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Filed: August 20, 2015



Request for Proposal to Provide Health Savings Account Administrative Services

In accordance with Chapter 1551 of the Texas Insurance Code, the Employees Retirement System of Texas ("ERS") will issue a Request for Proposal ("RFP") seeking a qualified vendor ("Vendor") to provide health savings account administrative services. The Vendor shall provide the level of services required in the RFP and meet other requirements that are in the best interest of ERS, the Texas Employees Group Benefits Program ("GBP"), its Participants and the state of Texas. If selected, the Vendor shall be required to execute a Contractual Agreement ("Contract") provided by, and satisfactory to, ERS.

A Vendor wishing to submit a Proposal shall meet the minimum requirements and criteria as described in Article II of the RFP. Each Proposal will be evaluated individually and relative to the Proposals of other qualified Vendors.

The RFP will be posted on or after September 10, 2015, to ERS' server. To access the RFP, Vendors shall email a request to ivendorquestions@ers.state.tx.us. The Vendor must provide the following information in its request: RFP No. 327-94807-150910; RFP for HSA Administrative Services. The RFP will include documents for the Vendors' review and response.

General questions concerning the RFP and/or ancillary bid materials should be sent by email to purchasing-all@ers.state.tx.us. When submitting questions, the Vendor must provide the following information in the Re: line of its email request: RFP No. 327-94807-150910; RFP for HSA Administrative Services. The submission deadline for all RFP questions is expected to be September 18, 2015, at 4:00 p.m. CT. ERS expects to complete the posting of all RFP questions and answers by 5:00 p.m. CT on September 30, 2015.

To be eligible for consideration, a Vendor is required to submit its Proposal in accordance with the instructions set forth in the RFP. All materials shall be received by ERS no later than noon CT on October 8, 2015, or such other date specified in the RFP.

ERS reserves the right to reject any and/or all Proposals and/or call for new Proposals if deemed by ERS to be in the best interests of ERS, the GBP, its Participants and the state of Texas. ERS also reserves the right to reject any Proposal submitted that does not fully comply with the RFP's instructions and criteria. ERS is under no legal requirement to execute a Contract on the basis of this notice or upon issuance of the RFP and will not pay any costs incurred by any entity in responding to this notice or in connection with the preparation of a Proposal. ERS reserves the right to vary all provisions set forth at any time prior to execution of a Contract where ERS deems it to be in the best interests of ERS, the GBP, its Participants and the state of Texas.

TRD-201503275

Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

Filed: August 21, 2015



Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, 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 October 5, 2015. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087, and must be received by 5:00 p.m. on October 5, 2015. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the com-

ment 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: ALLEN LOGGINS and SON, Incorporated; DOCKET NUMBER: 2015-0911-WQ-E; IDENTIFIER: RN106706021; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: Anytime Septic Solutions LLC; DOCKET NUMBER: 2015-0980-SLG-E; IDENTIFIER: RN108267782; LOCATION: Cleveland, Liberty County; TYPE OF FACILITY: sludge transporter; RULES VIOLATED: TWC, §26.121(a)(2) and 30 TAC §312.143, by failing to deposit wastes at a facility designated by or acceptable to the generator where the owner or operator of the facility agrees to receive the wastes and the (Texas) facility has written authorization by permit or registration issued by the executive director to receive wastes; PENALTY: \$1,573; ENFORCEMENT COORDINATOR: Larry Butler, (512) 239-2543; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: BZ Enterprises, Incorporated dba I-35 Texaco; DOCKET NUMBER: 2015-0690-PST-E; IDENTIFIER: RN102719630; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$4,125; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Cameron Rig Solutions, Incorporated; DOCKET NUMBER: 2015-0692-AIR-E; IDENTIFIER: RN104348339; LOCATION: Houston, Harris County; TYPE OF FACILITY: surface coating facility; RULES VIOLATED: 30 TAC §122.210(a) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a permit revision application for Federal Operating Permit Number O3341; and 30 TAC §117.2030(c) and THSC, §382.085(b), by failing to test the emergency diesel generator only during permissible hours; PENALTY: \$18,750; Supplemental Environmental Project offset amount of \$7,500; ENFORCEMENT COORDINATOR: Eduardo Heras, (512) 239-2422; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: City of George West; DOCKET NUMBER: 2015-0354-PWS-E; IDENTIFIER: RN103778528; LOCATION: George West, Live Oak County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(D)(i), (e)(1) and (2) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide two or more wells with a total capacity of 0.6 gallons per minute per connection and failing to provide enough production, treatment, and service pumping capacity to meet or exceed the combined maximum daily commitments specified in contractual agreements; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.46(m)(4), by failing to maintain all distribution system lines, storage and pressure maintenance facilities, water treatment units, and all related appurtenances in a watertight condition; 30 TAC §290.46(e)(4)(C) and THSC §341.033(a), by failing to operate the

facility under the direct supervision of at least two water works operators who hold a Class C or higher license; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; and 30 TAC §290.46(f)(2), (3)(A)(iii), (B)(iv) and (v) and (D)(ii), by failing to make water works operation and maintenance records available for review by commission personnel during the investigation; PENALTY: \$1,990; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(6) COMPANY: City of Round Rock; DOCKET NUMBER: 2015-0836-EAQ-E; IDENTIFIER: RN102731577; LOCATION: Round Rock, Williamson County; TYPE OF FACILITY: sports facility; RULE VIOLATED: 30 TAC §213.4(j)(1) and Edwards Aquifer Protection Plan Number 11-12082301, Standard Conditions Number 3, by failing to obtain approval of a modification to an approved water pollution abatement plan prior to initiating physical modifications; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Gregory Zychowski, (512) 239-3158; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78711-3087, (512) 339-2929.

(7) COMPANY: CORESLAB STRUCTURES (TEXAS) INCORPORATED; DOCKET NUMBER: 2015-0646-WQ-E; IDENTIFIER: RN105147250; LOCATION: Cedar Park, Williamson County; TYPE OF FACILITY: concrete product facility manufacturing; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR05U290 Part V, Section E, Sector E(3)(d), by failing to conduct, at a minimum, monthly inspections to determine the effectiveness of the Pollution Prevention Measures and Controls for the months of February 2014 - December 2014; 30 TAC §305.125(1) and TPDES General Permit Number TXR05U290, Part V, Section E, Sector E(6), by failing to conduct semiannual benchmark monitoring for total suspended solids (TSS), total Iron, and pH for the semiannual monitoring periods of January 2014 - June 2014 and July 2014 - December 2014; 30 TAC §305.125(1) and TPDES General Permit Number TXR05U290, Part III, Section B(5), by failing to conduct the annual comprehensive site compliance inspection; 30 TAC §305.125(1) and TPDES General Permit Number TXR05U290, Part III, Section D(1)(c), by failing to maintain a rain gauge on-site to determine when a qualifying storm event occurs; 30 TAC §305.125(1) and TPDES General Permit Number TXR05U290, Part III, Section B(3), by failing to conduct quarterly visual monitoring of storm water discharges for the monitoring periods ending March 31, 2014, June 30, 2014, September 30, 2014, and December 31, 2014; 30 TAC §305.125(1) and TPDES General Permit Number TXR05U290, Part III, Section A(4)(f)(1), by failing to conduct employee training at least once per year to all employees who are responsible for implementing or maintaining activities identified in the site's Storm Water Pollution Prevention Plan (SWP3) for 2014; 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES General Permit Number TXR05U290, Part III, Section A(4)(d)(1), by failing to maintain effective structural controls; 30 TAC §305.125(1) and TPDES General Permit Number TXR05U290, Part V, Section E, Sector E(5)(c)(2), by failing to annually monitor for compliance with numeric effluent limitations for TSS and pH by December 31, 2014; 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES General Permit Number TXR05U290, Part III, Section A(4)(e), by failing to implement spill prevention and response measures to prevent spills and to provide for adequate spill response; and 30 TAC §305.125(1) and TPDES General Permit Number TXR05U290, Part III, Section A(6), by failing to modify the SWP3 to reflect current site conditions; PENALTY: \$24,287; ENFORCEMENT COORDINATOR: Had Dar-

ling, (512) 239-2520; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78711-3087, (512) 339-2929.

(8) COMPANY: Davis Gas Processing, Incorporated; DOCKET NUMBER: 2015-0593-AIR-E; IDENTIFIER: RN100217686; LOCATION: Big Lake, Reagan County; TYPE OF FACILITY: oil and gas production plant; RULES VIOLATED: 30 TAC §101.201(b) and Texas Health and Safety Code, §382.085(b), by failing to create a final record of a non-reportable emissions event; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(9) COMPANY: Davis Gas Processing, Incorporated; DOCKET NUMBER: 2015-0591-AIR-E; IDENTIFIER: RN102744398; LOCATION: Barnhart, Irion County; TYPE OF FACILITY: gas processing plant; RULES VIOLATED: 30 TAC §101.20(1), Texas Health and Safety Code (THSC), §382.085(b), and 40 Code of Federal Regulations §60.633(b)(3)(i), by failing to repair valves no later than 15 days after a leak is detected; 30 TAC §122.143(4) and §122.145(2)(A), THSC, §382.085(b), and Federal Operating Permit (FOP) Number O210/General Operating Permit (GOP) Number 514, Site-wide Requirements (b)(2), by failing to report all instances of deviations; and 30 TAC §106.6(b) and §122.143(4), THSC, §382.085(b), FOP Number O210/GOP Number 514, Site-wide Requirements (8)(b), and Permit by Rule Registration Number 95129, by failing to comply with the annual allowable volatile organic compound emissions rate for the Ethylene Glycol Still Vent, EPN 4; PENALTY: \$15,400; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(10) COMPANY: Devon Gas Services, L.P.; DOCKET NUMBER: 2013-1755-AIR-E; IDENTIFIER: RN100223619; LOCATION: Bridgeport, Wise County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), 116.116(b), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O910, Special Terms and Conditions (STC) Number 7, and New Source Review (NSR) Permit Numbers 16926 and PSDTX686M1, Special Conditions (SC) Number 1, by failing to comply with representations in the permit application for NSR Permit Number 16926; 30 TAC §§101.20(3), 116.115(b)(2)(F), and 122.143(4), THSC, §382.085(b), FOP Number O910, STC Number 7, and NSR Permit Numbers 16926 and PSDTX686M1, SC Number 1, by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B) and §122.143(4), THSC, §382.085(b), and FOP Number O910, STC Number 2.F, by failing to submit an initial notification for Incident 180973 within 24 hours of discovery of the emissions event; PENALTY: \$52,486; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Duinink Incorporated; DOCKET NUMBER: 2015-1239-WQ-E; IDENTIFIER: RN108331067; LOCATION: Shallower, Lubbock County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(12) COMPANY: Fieldstone, Incorporated; DOCKET NUMBER: 2015-1173-WQ-E; IDENTIFIER: RN108398272; LOCATION: Copperas Cove, Coryell County; TYPE OF FACILITY: residential subdivision; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: \$875;

ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: HilltopMHPark LLC; DOCKET NUMBER: 2015-0545-PWS-E; IDENTIFIER: RN101439651; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of Well Number 2 (G2200107B); 30 TAC §290.46(m)(1)(A), by failing to conduct an annual inspection of the facility's two ground storage tanks; 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the facility's two pressure tanks; 30 TAC §290.43(c)(4), by failing to provide all water storage tanks with a liquid level indicator located at the tank site; 30 TAC §290.46(f)(2), (3)(A)(i)(III), (ii)(III), (iii), and (iv), by failing to maintain water works operation and maintenance records and make them readily available for review by commission personnel upon request; 30 TAC §290.42(j), by failing to use an approved chemical or media for the disinfection of potable water that conforms to the American National Standards Institute/National Sanitation Foundation standard 60; 30 TAC §290.46(n)(3), by failing to maintain copies of well completion data such as well material setting data, geological log, sealing information (pressure cementing and surface protection), disinfection information, microbiological sample results, and a chemical analysis report of a representative sample of water from the well for Well Number 2 (G2200107B); 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.43(c)(3), by failing to maintain the facility's storage tanks in strict accordance with current American Water Works Association standards; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.43(c)(6), by failing to maintain all treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; 30 TAC §290.42(m), by failing to enclose the pump station with an intruder-resistant fence; and 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notification to customers of the facility within 24 hours using the prescribed notification format as specified in 30 TAC §290.47(e) for water outages that occurred on September 18 and September 24, 2014 due to a well motor malfunction; PENALTY: \$2,176; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: James A. Williams Family Partnership; DOCKET NUMBER: 2015-1182-WQ-E; IDENTIFIER: RN105488852; LOCATION: Longview, Gregg County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2616 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(15) COMPANY: Jarret Allen Porter; DOCKET NUMBER: 2015-0390-WOC-E; IDENTIFIER: RN108045618; LOCATION: Odessa, Reagan County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §30.5(a) and §30.331(b), and TWC, §26.0301(c) and §37.003, by failing to obtain a valid wastewater operator license prior to performing process control duties in the treatment of wastewater; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Gregory Zychowski, (512) 239-3158; REGIONAL

OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(16) COMPANY: Leif A. Zars dba TRADEWINDS MANAGEMENT, LLC dba SOUTHERN TRADEWINDS LIMITED PARTNERSHIP; DOCKET NUMBER: 2015-0696-PWS-E; IDENTIFIER: RN101217396; LOCATION: Comfort, Kendall County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(F) and Texas Health and Safety Code, §341.033(d), by failing to collect all five routine distribution coliform samples the month following a total coliform-positive sample result; 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director each quarter by the tenth day of the month following the end of the quarter and failing to provide public notification and submit a copy of the notification to the executive director regarding the failure to submit a DLQOR to the executive director; 30 TAC §290.117(c)(2)(B) and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect annual lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director and failed to provide public notification and submit a copy of the public notification to the executive director regarding the failure to collect lead and copper samples; and 30 TAC §290.117(c)(2)(C) and (i)(1), by failing to collect triennial lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director; PENALTY: \$1,820; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(17) COMPANY: Methodist Healthcare System of San Antonio, Limited, L.L.P.; DOCKET NUMBER: 2015-0759-PST-E; IDENTIFIER: RN103931549; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: a hospital with an emergency power generator and one petroleum underground storage tank (UST); RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), 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; 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)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$8,612; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(18) COMPANY: NAPCO Precast, LLC; DOCKET NUMBER: 2015-0946-AIR-E; IDENTIFIER: RN105451330; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: concrete manufacturing plant; RULES 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 conducting outdoor abrasive blasting operations; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Jennifer Nguyen, (512) 239-6160; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(19) COMPANY: River Terrace Sand Pit; DOCKET NUMBER: 2015-1171-WQ-E; IDENTIFIER: RN108233180; LOCATION: Huffman, Huffman County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit (stormwater); PENALTY: \$875; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564;

REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: Roman Forest Public Utility District 4; DOCKET NUMBER: 2015-0370-PWS-E; IDENTIFIER: RN102688264; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director each quarter by the tenth day of the month following the end of the quarter for the third quarter of 2014 and failed to provide public notification and submit a copy of the public notification to the executive director regarding the failure to provide the DLQOR for the first quarter of 2014; 30 TAC §290.117(c)(2)(B) and (i)(1), by failing to collect lead and copper tap samples at the required six sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director for the January 1, 2011 - December 31, 2011; January 1, 2013 - December 31, 2013; and January 1, 2014 - December 31, 2014 monitoring periods; 30 TAC §290.272(a)(1), (b)(1)(D), (d)(3) and (e), by failing to meet the adequacy, availability, and/or content requirements for the Consumer Confidence Report for the year of 2013; and 30 TAC §290.109(c)(4)(C), by failing to notify the wholesale system within 24 hours of being notified of a total coliform-positive distribution sample; PENALTY: \$770; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: SP UTILITY COMPANY, INCORPORATED; DOCKET NUMBER: 2015-0676-PWS-E; IDENTIFIER: RN103779039; LOCATION: Rosharon, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director each quarter by the tenth day of the month following the end of each quarter; 30 TAC §290.117(c)(2)(A) and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed at an approved laboratory and submit the results to the executive director; and 30 TAC §290.122(b)(3)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to comply with the maximum contaminant level for arsenic based on the running annual average; PENALTY: \$2,841; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: SPECIALIZED WASTE SYSTEMS, INCORPORATED; DOCKET NUMBER: 2015-0621-IHW-E; IDENTIFIER: RN102830684; LOCATION: Channelview, Harris County; TYPE OF FACILITY: tank washing and waste transport facility; RULES VIOLATED: 30 TAC §335.2(b), by failing to cause, suffer, allow, or permit the disposal of industrial hazardous waste at an unauthorized facility; 30 TAC §335.6(e), by failing to notify the TCEQ regarding the operation of a transfer facility; and 30 TAC §335.6(c), by failing to notify the TCEQ regarding the facility's generator status and update the Notice of Registration to include waste management units for each waste stream generated at the facility; PENALTY: \$21,290; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: Town of Shady Shores; DOCKET NUMBER: 2015-0450-WQ-E; IDENTIFIER: RN105881262; LOCATION: Shady Shores, Denton County; TYPE OF FACILITY: municipal separate storm sewer system; RULE VIOLATED: 30 TAC §281.25(a)(4) and

40 Code of Federal Regulations §122.26(a)(9)(i)(A), by failing to maintain authorization to discharge stormwater under Texas Pollutant Discharge Elimination System Small Municipal Separate Storm Sewer System General Permit; PENALTY: \$10,000; Supplemental Environmental Project offset amount of \$8,000; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: UNITED PARTNERSHIP, INCORPORATED dba Shell Food Mart; DOCKET NUMBER: 2015-0888-PST-E; IDENTIFIER: RN101435469; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,567; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: VALLIANI INVESTMENTS, INCORPORATED dba AM Mini Mart 23; DOCKET NUMBER: 2015-0580-PST-E; IDENTIFIER: RN101783595; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,375; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: ZEPHYR WATER SUPPLY CORPORATION; DOCKET NUMBER: 2015-0744-PWS-E; IDENTIFIER: RN101205524; LOCATION: Zephyr, Brown County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: \$351; ENFORCEMENT COORDINATOR: Gregory Zychowski, (512) 239-3158; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-201503417

Kathleen C. Decker

Director, Litigation

Texas Commission on Environmental Quality

Filed: August 26, 2015



Enforcement Orders

An agreed order was entered regarding Ciria Canales dba Bumper to Bumper Auto Repair and Collision Center, Docket No. 2014-1168-AIR-E on August 12, 2015, assessing \$4,156 in administrative penalties with \$831 deferred.

Information concerning any aspect of this order may be obtained by contacting Farhaudd Abbaszadeh, Enforcement Coordinator at (512) 239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Wolfforth, Docket No. 2014-1259-WQ-E on August 12, 2015, assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Holy Trinity Episcopal School of Greater Houston, Inc., Docket No. 2014-1347-MWD-E on August 12, 2015, assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of San Juan, Docket No. 2014-1350-MWD-E on August 12, 2015, assessing \$6,750 in administrative penalties with \$1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Criminal Justice, Docket No. 2014-1492-MWD-E on August 12, 2015, assessing \$5,750 in administrative penalties with \$1,150 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chilton Water Supply and Sewer Service Corporation, Docket No. 2014-1848-MWD-E on August 12, 2015, assessing \$6,600 in administrative penalties with \$1,320 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Joe Burnes, Docket No. 2014-1884-MSW-E on August 12, 2015, assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County, Docket No. 2015-0073-PST-E on August 12, 2015, assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Natural Petroleum LLC dba Race Runner 4, Docket No. 2015-0142-PST-E on August 12, 2015, assessing \$3,563 in administrative penalties with \$712 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding D Texas D Tooling And Manufacturing, Inc., Docket No. 2015-0265-MSW-E on August 12, 2015, assessing \$250 in administrative penalties with \$50 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rayburn Country Municipal Utility District, Docket No. 2015-0275-PWS-E on August 12, 2015, assessing \$616 in administrative penalties with \$123 deferred.

Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Capital Dallas Electric Motor Service, Inc., Docket No. 2015-0279-AIR-E on August 12, 2015, assessing \$1,312 in administrative penalties with \$262 deferred.

Information concerning any aspect of this order may be obtained by contacting Eduardo Heras, Enforcement Coordinator at (512) 239-2422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SACC, Inc., Docket No. 2015-0282-WQ-E on August 12, 2015, assessing \$876 in administrative penalties with \$175 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Premcor Refining Group Inc., Docket No. 2015-0292-AIR-E on August 12, 2015, assessing \$7,125 in administrative penalties with \$1,425 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding La Casita Holdings Inc, Docket No. 2015-0312-MWD-E on August 12, 2015, assessing \$4,950 in administrative penalties with \$990 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Highland Village, Docket No. 2015-0347-WQ-E on August 12, 2015, assessing \$4,063 in administrative penalties with \$812 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lone Star, Docket No. 2015-0348-MWD-E on August 12, 2015, assessing \$3,625 in administrative penalties with \$725 deferred.

Information concerning any aspect of this order may be obtained by contacting Gregory Zychowski, Enforcement Coordinator at (512) 239-3158, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southview Baptist Church, Docket No. 2015-0358-PWS-E on August 12, 2015, assessing \$1,250 in administrative penalties with \$250 deferred.

Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hidden Diamond, Inc dba One Stop Food Store, Docket No. 2015-0382-PST-E on August 12, 2015, assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Beeville, Docket No. 2015-0385-PWS-E on August 12, 2015, assessing \$188 in administrative penalties with \$37 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Abbott, Docket No. 2015-0413-MWD-E on August 12, 2015, assessing \$2,750 in administrative penalties with \$550 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bosque Basin Water supply corporation, Docket No. 2015-0419-PWS-E on August 12, 2015, assessing \$100 in administrative penalties with \$20 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaëlle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Joaquin, Docket No. 2015-0440-PWS-E on August 12, 2015, assessing \$390 in administrative penalties with \$78 deferred.

Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Leander and Rockin Q Construction, LLC, Docket No. 2015-0445-WQ-E on August 12, 2015, assessing \$1,876 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dimmit County, Docket No. 2015-0462-PWS-E on August 12, 2015, assessing \$105 in administrative penalties with \$21 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Khalid J. Qureshi dba ANJ Food Store, Docket No. 2015-0466-PST-E on August 12, 2015, assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Qro Mex Construction Company, Inc., Docket No. 2015-0479-WQ-E on August 12, 2015, assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nieknaz Enterprises Inc dba Swift-T #11, Docket No. 2015-0484-PST-E on August 12, 2015, assessing \$4,875 in administrative penalties with \$975 deferred.

Information concerning any aspect of this order may be obtained by contacting Allyson Plantz, Enforcement Coordinator at (512) 239-4593, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Parveez Investment Inc. dba Chevron Churchs Food Mart, Docket No. 2015-0485-PST-E on August 12, 2015, assessing \$3,375 in administrative penalties with \$675 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Henderson, Docket No. 2015-0486-PWS-E on August 12, 2015, assessing \$330 in administrative penalties with \$66 deferred.

Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-6155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Maria Medeles dba Magnolia Gardens and Princess, Inc. dba Magnolia Gardens, Docket No. 2015-0490-PWS-E on August 12, 2015, assessing \$412 in administrative penalties with \$82 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hajarat Corporation dba Corner Food Store, Docket No. 2015-0500-PST-E on August 12, 2015, assessing \$5,401 in administrative penalties with \$1,080 deferred.

Information concerning any aspect of this order may be obtained by contacting Holly Kneisley, Enforcement Coordinator at (817) 588-5856, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Krebs Utilities, Inc. dba Timber Ridge Section 2 and Stephen P. Krebs dba Timber Ridge Section 2, Docket No. 2015-0507-PWS-E on August 12, 2015, assessing \$1,307 in administrative penalties with \$260 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-

4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Romualdo Soto, Jr., Docket No. 2015-0543-WQ-E on August 12, 2015, assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Katelyn Samples, Enforcement Coordinator at (512) 239-4728, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Petro-Crete, LLC, Docket No. 2015-0581-AIR-E on August 12, 2015, assessing \$3,850 in administrative penalties with \$770 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Nguyen, Enforcement Coordinator at (512) 239-6160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tige Boats, Inc., Docket No. 2015-0602-AIR-E on August 12, 2015, assessing \$7,125 in administrative penalties with \$1,425 deferred.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (713) 767-3567, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enervest Operating, L.L.C., Docket No. 2015-0610-AIR-E on August 12, 2015, assessing \$3,188 in administrative penalties with \$637 deferred.

Information concerning any aspect of this order may be obtained by contacting Eduardo Heras, Enforcement Coordinator at (512) 239-2422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Windsor Water Company, Docket No. 2015-0617-PWS-E on August 12, 2015, assessing \$148 in administrative penalties with \$29 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Monarch Utilities I.L.P., Docket No. 2015-0724-PWS-E on August 12, 2015, assessing \$330 in administrative penalties with \$66 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Stephen T. Dougherty, Docket No. 2015-0812-WR-E on August 12, 2015, assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Michael R. Thorp, Docket No. 2015-0864-MLM-E on August 12, 2015, assessing \$350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-

2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Edcouch, Docket No. 2012-0646-MWD-E on August 19, 2015, assessing \$17,425 in administrative penalties with \$3,485 deferred.

Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2601, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Skellytown, Docket No. 2012-2619-MLM-E on August 19, 2015, assessing \$13,552 in administrative penalties with \$2,710 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Petro-Tech Environmental, LLC, Docket No. 2013-0500-IHW-E on August 19, 2015, assessing \$54,151 in administrative penalties with \$10,830 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding L Fakir Inc. dba West Hardy Diamond, Docket No. 2013-0520-PST-E on August 19, 2015 assessing \$21,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, 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 Spygoat, Inc. dba Econo Lube N Tune Texas Brakes, Docket No. 2013-1422-PST-E on August 19, 2015, assessing \$9,406 in administrative penalties with \$1,881 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Town of Anthony, Docket No. 2013-1499-MWD-E on August 19, 2015, assessing \$28,012 in administrative penalties with \$28,012 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Baker Hughes Oilfield Operations, Inc., Docket No. 2013-1700-MLM-E on August 19, 2015, assessing \$8,625 in administrative penalties with \$1,724 deferred.

Information concerning any aspect of this order may be obtained by contacting Larry Butler, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Juan Antonio Diaz dba Tony's Tire Service and dba Tony's Tire Shop, Docket No. 2013-2144-MSW-E on August 19, 2015, assessing \$14,300.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, 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 De Dietrich (Usa), Inc., Docket No. 2014-0102-MLM-E on August 19, 2015, assessing \$10,500 in administrative penalties with \$2,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Good Time Stores, Inc. dba Good Time Store 26, Docket No. 2014-0116-AIR-E on August 19, 2015, assessing \$1,275 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Amber Ahmed, 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 Spring Meadow Mobile Home Park, LLC, Docket No. 2014-0129-PWS-E on August 19, 2015, assessing \$1,616 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Greg Zychowski, Enforcement Coordinator at (512) 239-3158, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Patriot Dozer Service, L.L.C. dba Tindol Construction, Docket No. 2014-0759-WQ-E on August 19, 2015, assessing \$8,375 in administrative penalties with \$1,675 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Calumet San Antonio Refining, LLC, Docket No. 2014-0769-MLM-E on August 19, 2015, assessing \$37,225 in administrative penalties with \$7,445 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gary Tidrow, Docket No. 2014-0782-MSW-E on August 19, 2015, assessing \$15,750 in administrative penalties with \$8,907 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nci Group, Inc., Docket No. 2014-0804-AIR-E on August 19, 2015, assessing \$15,150 in administrative penalties with \$3,030 deferred.

Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Citgo Refining and Chemicals Company L.P., Docket No. 2014-0911-AIR-E on August 19, 2015, assessing \$11,626 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hidalgo County, Docket No. 2014-1094-MSW-E on August 19, 2015, assessing \$17,813 in administrative penalties with \$3,562 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wtg Jameson, LP, Docket No. 2014-1162-AIR-E on August 19, 2015, assessing \$70,380 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Farhaudd Abbaszadeh, Enforcement Coordinator at (512) 239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Oil Company, Docket No. 2014-1245-AIR-E on August 19, 2015, assessing \$23,450 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Basf Corporation, Docket No. 2014-1304-AIR-E on August 19, 2015, assessing \$132,638 in administrative penalties with \$26,527 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Sotex Oilfield Services, LLC., Docket No. 2014-1335-MLM-E on August 19, 2015, assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, 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 Weatherford Aerospace, Inc., Docket No. 2014-1374-WQ-E on August 19, 2015, assessing \$4,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gregory Zychowski, Enforcement Coordinator at (512) 239-3158, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lewisville, Docket No. 2014-1418-MWD-E on August 19, 2015, assessing \$24,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ag-Land Distribution, Inc., Docket No. 2014-1670-MSW-E on August 19, 2015, assessing \$12,625 in administrative penalties with \$2,525 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Haskell, Docket No. 2014-1709-PWS-E on August 19, 2015, assessing \$1,326 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Chemical LP, Docket No. 2014-1728-AIR-E on August 19, 2015, assessing \$15,000 in administrative penalties with \$3,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (210) 403-4063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dcp Midstream, LP, Docket No. 2014-1765-AIR-E on August 19, 2015, assessing \$25,430 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (210) 403-4063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rodell Water System, Inc., Docket No. 2014-1788-PWS-E on August 19, 2015, assessing \$4,558 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding John Clark Zimmerman, Docket No. 2014-1810-LII-E on August 19, 2015, assessing \$964 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jess Robinson, 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 National Park Service, Docket No. 2014-1822-PWS-E on August 19, 2015, assessing \$367 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2014-1877-AIR-E on August 19, 2015, assessing \$95,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Joshua G. Duke, Docket No. 2014-1878-LII-E on August 19, 2015, assessing \$937 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Amber Ahmed, 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 Angelina County, Docket No. 2014-1886-MSW-E on August 19, 2015, assessing \$24,188 in administrative penalties with \$4,837 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Follett, Docket No. 2015-0025-PWS-E on August 19, 2015, assessing \$1,202 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Salem-Elm Ridge Water supply corporation, Docket No. 2015-0049-PWS-E on August 19, 2015, assessing \$405 in administrative penalties with \$405 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Derrick Oil & Supply, Inc. Of Port Arthur, Texas, Docket No. 2015-0052-PST-E on August 19, 2015, assessing \$7,875 in administrative penalties with \$1,575 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dublin Stop Group Inc dba Dublin Stop, Docket No. 2015-0053-PST-E on August 19, 2015, assessing \$9,147 in administrative penalties with \$1,829 deferred.

Information concerning any aspect of this order may be obtained by contacting Allyson Plantz, Enforcement Coordinator at (512) 239-4593, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enbridge G & P (East Texas) L.P., Docket No. 2015-0062-AIR-E on August 19, 2015, assessing \$9,275 in administrative penalties with \$1,854 deferred.

Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sam Rayburn Water, Inc., Docket No. 2015-0079-PWS-E on August 19, 2015, assessing \$702 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Richard Billings dba Oak Hills Ranch Water, Docket No. 2015-0098-PWS-E on August 19, 2015, assessing \$1,303 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jena Business, Inc. dba The Store of Florence, Docket No. 2015-0126-PST-E on August 19, 2015, assessing \$10,500 in administrative penalties with \$2,100 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. du Pont de Nemours and Company, Docket No. 2015-0185-AIR-E on August 19, 2015, assessing \$25,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Stamford, Docket No. 2015-0303-PWS-E on August 19, 2015, assessing \$1,327 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katie Hargrove, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stanley Mobile Home Park, LLC, Docket No. 2015-0478-PWS-E on August 19, 2015, assessing \$1,320 in administrative penalties with \$1,320 deferred.

Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Matagorda Waste Disposal and Water Supply Corporation, Docket No. 2015-0603-PWS-E on August 19, 2015, assessing \$345 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katelyn Samples, Enforcement Coordinator at (512) 239-4728, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201503416

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 26, 2015



Notice of Costs to Administer the Voluntary Cleanup Program and the Innocent Owner/Operator Program

In accordance with Texas Health and Safety Code, §361.613 (pertaining to the Voluntary Cleanup Program (VCP)) and 30 TAC §333.43 (pertaining to the Innocent Owner/Operator Program (IOP)), the executive director of the Texas Commission on Environmental Quality (TCEQ or commission) annually shall calculate the commission's costs to administer the VCP and the IOP, and shall publish in the *Texas Register* the rates established for the purposes of identifying the costs recoverable by the commission. The TCEQ has calculated and is publishing the bill rate for both the VCP and the IOP as \$115 per hour for the commission's Fiscal Year 2016.

The VCP and the IOP are implemented by the same TCEQ staff. Therefore, a single hourly bill rate for both programs is appropriate. The hourly bill rate is determined based upon current projections for staff salaries for the Fiscal Year 2016, including the fringe benefit rate and the indirect cost rate, minus anticipated federal funding that the commission will receive, and then divided by the estimated number of staff hours necessary to complete the program tasks. Fringe benefits include retirement, social security, and insurance expenses and are calculated at a set rate for the entire agency. The current fringe benefit rate is 30.18% of the budgeted salaries. Indirect costs include allowable overhead expenses and also are calculated at a set rate for the entire agency. The current indirect cost rate is 32.45% of the budgeted salary. The release time hours include, for example, sick leave, holidays, military duty, and jury duty, and are set at 25.30%. The hourly bill rate was calculated and then rounded to the nearest whole dollar amount. The commission will use an hourly bill rate of \$115 for both the VCP and the IOP for the Fiscal Year 2016. After an applicant's initial \$1,000 application fee has been depleted for the VCP or the IOP review and oversight costs, invoices will be sent monthly to the applicant, or designee, for payment.

The commission anticipates receiving federal funding during Fiscal Year 2016 for the continued development and enhancement of the VCP and the IOP. If the federal funding anticipated for Fiscal Year 2016 does not become available, the commission may calculate and publish a new hourly bill rate. Federal funding of the VCP and the IOP should occur prior to October 1, 2015.

For more information, please contact Ms. Anna Rodriguez Bruloths, VCP-CA Section, Remediation Division, Texas Commission on Environmental Quality, MC 221, 12100 Park 35 Circle, Austin, Texas 78753 or call (512) 239-5052 or email: anna.r.bruloths@tceq.texas.gov.

TRD-201503422

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: August 26, 2015



Notice of Public Hearing on Proposed Amendments to 30 TAC Chapter 20

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 20, Rulemaking, §20.15, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement House Bill 763, 84th Texas Legislature, 2015, which provides the definition of "interested person" for the purposes of filing a petition for rulemaking.

The commission will hold a public hearing on this proposal in Austin on September 29, 2015 at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2015-023-020-L.S. The comment period closes on October 5, 2015. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Kathy Humphreys, Environmental Law Division, at (512) 239-3417.

TRD-201503323

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: August 21, 2015



Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 336

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 336, Radioactive Substances Rules, §336.2; the repeal of §336.357; and new §336.357 and §336.739, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement revisions to the commission's rules concerning physical protection of radioactive material to ensure compatibility with federal regulations promulgated by the United States Nuclear Regulatory Commission and implements Senate Bill 347, 83rd Texas Legislature, 2013, by proposing new §336.739, to provide for volume reduction of low-level radioactive waste.

The commission will hold a public hearing on this proposal in Austin on September 29, 2015, at 10:00 a.m. in Building E, Room 201S at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Written comments may be submitted to Sherry Davis, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2015-012-336-WS. The comment period closes October 4, 2015. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Bobby Janecka, Radioactive Material Licensing Unit, (512) 239-6415.

TRD-201503318

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: August 21, 2015



Revised Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Registration Application Number 40283

Application. Daniels Sharpsmart, Inc., 6046 FM 2920, Suite 515, Spring, Texas 77379-2542, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40283, to construct and operate a municipal solid waste Type V medical waste processing facility. The proposed facility, Daniels Sharpsmart Houston, will be located at 4660 World Houston Pkwy, Houston, Texas 77032, in Harris County, 0.5 miles northeast of the intersection of John F. Kennedy Blvd and North Sam Houston Pkwy East. The Applicant is requesting authorization to store, transfer and treat municipal solid waste which includes medical waste as defined in 30 TAC §330.3(85) by the TCEQ, special waste from healthcare related facilities as defined in 25 TAC §1.132 by the Texas Department of State Health Services, and outdated/off-specification pharmaceuticals and seized drugs. The registration application is available for viewing and copying at the Octavia Fields Memorial Branch 1503 W Houston Library, 7900 Will Clayton Pkwy, Houston, Harris County, Texas 77338, telephone number (281) 446-3377, and may be viewed online at <http://www.cook-joyce.com/documents.htm>. The following website which provides an electronic map of the site or 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=29.942397&lng=-95.323525&zoom=13&type=r>. For exact location, refer to application.

Public Comment/Public Meeting. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 60 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision.

The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all

persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk mail code MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically submitted to <http://www14.tceq.texas.gov/epic/eComment/>. If you choose to communicate with the TCEQ electronically, please be aware that your e-mail address, like your physical mailing address, will become part of the agency's public record. For information about this application or the registration process, individual members of the general public may call the TCEQ Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at <http://www.tceq.texas.gov/>. Further information may also be obtained from Daniels Sharpsmart, Inc. at the address stated above or by calling Mr. Bobby R. Clark, Gulf Coast Regional Vice President at (713) 539-0823.

TRD-201503415
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 26, 2015



Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission of names of filers who did not file a report or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: Personal Financial Statement due April 30, 2015

Tracy A. Byerly II, 1217 Virginia Dr., Kerrville, Texas 70452
Maria Salas-Mendoza, 3412 Glasgow Rd., El Paso, Texas 79925

TRD-201503244
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: August 19, 2015



Texas Facilities Commission

Request for Proposals #303-7-2015

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-7-2015. TFC seeks a five (5) or ten (10) year lease of approximately 2,224 square feet of office space in Fort Worth, Texas.

The deadline for questions is September 23, 2015 and the deadline for proposals is September 30, 2015 at 3:00 p.m. The award date is November 18, 2015. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494.

A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=119711.

TRD-201503279

Kay Molina

General Counsel

Texas Facilities Commission

Filed: August 21, 2015

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General Land Office

Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that George P. Bush, Commissioner of the General Land Office, approved a coastal boundary survey described as follows:

A Coastal Boundary Survey, dated the month of June, 2015, by Nedra Foster, Licensed State Land Surveyor, on the shore of the Gulf of Mexico, delineating a portion of the littoral boundary of the J. G. McNeel Survey, Abstract 335, along the line of Mean High Water, same line being the boundary of Gulf of Mexico Submerged Land Tracts 377 and 378. The survey is in support of Coastal Erosion Planning and Response Act (CEPRA), Project No. 1571 and is situated at the eastern end of Bryan Beach Road, the Town of Quintana, at coordinates N 28°54'48", W95°19'58" (N28.913416°, W95.332823°) WGS84, in Brazoria County.

This survey is intended to provide pre-project baseline information related to an erosion response activity on coastal public lands. An owner of uplands adjoining the project area is entitled to continue to exercise littoral rights possessed prior to the commencement of the erosion response activity, but may not claim any additional land as a result of accretion, reliction, or avulsion resulting from the erosion response activity.

For a copy of this survey or more information on this matter, contact David Pyle, Director of the Survey Division, Texas General Land Office by phone at (512) 463-5229, email david.pyle@glo.texas.gov, or fax (512) 463-5223.

TRD-201503390

Anne L. Idsal

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: August 24, 2015

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Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that George P. Bush, Commissioner of the General Land Office, approved a coastal boundary survey described as follows:

A Coastal Boundary Survey, dated April 21, 2015, by David L. Nesbitt, Licensed State Land Surveyor, delineating the littoral boundary line of portions of the T. J. Dasher Survey, A-146 and the L. Goodwin Survey, A-162, along the line of Mean High Water, same line being the boundary of Tres Palacios Bay Submerged Land Tracts 31 and 39. The survey is in support of a proposed beach nourishment project authorized under Texas General Land Office lease, CL19990014, and is situated along the southern limits of the City of Palacios, at coordinates N28°41'53", W96°12'50" (N28.698218°, W96.213998°) WGS84.

This survey is intended to provide pre-project baseline information related to an erosion response activity on coastal public lands. An owner of uplands adjoining the project area is entitled to continue to exercise

littoral rights possessed prior to the commencement of the erosion response activity, but may not claim any additional land as a result of accretion, reliction, or avulsion resulting from the erosion response activity.

For a copy of this survey or more information on this matter, contact David Pyle, Director of the Survey Division, Texas General Land Office by phone at (512) 463-5229, email david.pyle@glo.texas.gov, or fax (512) 463-5223.

TRD-201503391

Anne L. Idsal

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: August 24, 2015

◆ ◆ ◆
Texas Health and Human Services Commission

Public Notice of Withdrawal of Proposed Medicaid Payment Rates for Physical, Occupational and Speech Therapy

The Texas Health and Human Services commission (HHSC) has withdrawn the proposed Medicaid Payment Rates for Physical, Occupational, and Speech Therapy provided by Comprehensive Outpatient Rehabilitation Facilities/Outpatient Rehabilitation Facilities (CORFs/ORFs), Home Health Agencies (HHAs), and Independent Therapists that were the subject of a public hearing held on July 20, 2015, that was noticed in the July 10, 2015 issue of the *Texas Register* (40 TexReg 4475). Additional information may be obtained by contacting HHSC Rate Analysis by telephone at (512) 730-7401 or by e-mail to RADAcuteCare@hhsc.state.tx.us.

TRD-201503441

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: August 26, 2015

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Public Notice - Proposed Medicaid Payment Rates for Physical, Occupational, and Speech Therapy Provided by Comprehensive Outpatient Rehabilitation Facilities/Outpatient Rehabilitation Facilities, Home Health Agencies, and Independent Therapists

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on September 18, 2015, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for Physical, Occupational, and Speech Therapy provided by Comprehensive Outpatient Rehabilitation Facilities/Outpatient Rehabilitation Facilities (CORF/ORF), Home Health Agencies (HHA), and Independent Therapists. The proposed rate actions are based on direction provided by the 2016-2017 General Appropriations Act, 84th Legislature, Regular Session, Article II, Rider 50, at pages II-96 through II-98 (Health and Human Services Section, Health and Human Services Commission).

The public hearing will be held in the Public Hearing Room of the John H. Winters Building at 701 West 51st Street, Austin, Texas. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 Texas Administrative Code (1 TAC) §355.201, which require public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for Physical, Occupational, and Speech Therapy provided by Comprehensive Outpatient Rehabilitation Facilities/Outpatient Rehabilitation Facilities (CORF/ORF), Home Health

Agencies (HHA), and Independent Therapists are proposed to be effective October 1, 2015.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.201(d)(1)(A) and (D), which authorize HHSC to adjust rates for medical assistance if state law is enacted requiring a rate reduction or restricting the availability of appropriated funds;

§355.8021, which addresses the reimbursement methodology for home health services and durable medical equipment, prosthetics, orthotics, and supplies;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services.

Briefing Package. A briefing package describing the proposed payments will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on or after September 4, 2015. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing. The briefing package will contain a description of the specific rate adjustment that are proposed.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201503440

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: August 26, 2015



Department of State Health Services

Amendments to the Texas Controlled Substances Schedule

This amendment to the Texas Schedules of Controlled Substances was signed by the Interim Commissioner of the Department of State Health Services, and will take effect 21 days following publication of this notice in the *Texas Register*:

The Administrator of the Drug Enforcement Administration (DEA) issued a final order temporarily placing N-(1-phenethylpiperidine-4-yl)-N-phenylacetamide (Other names: acetyl fentanyl) into Schedule I of the United States Controlled Substances Act (CSA) effective July 17, 2015. This final order was published in the Federal Register, Volume 80, Number 137, pages 42381 - 42835. The Administrator has taken action based on the following.

Acetyl fentanyl has a high potential for abuse.

Acetyl fentanyl has no current accepted medical use in treatment in the United States.

There is a lack of accepted safety for use under medical supervision for acetyl fentanyl.

The scheduling of acetyl fentanyl in Schedule I on a temporary basis is necessary to avoid an imminent hazard to public safety.

Pursuant to §481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least thirty-one days have expired since notice of the above referenced actions were published in the Federal Register; and, in my capacity as Interim Commissioner of the Texas Department of State Health Services, I do hereby order that the substance acetyl fentanyl be placed temporarily into schedule I.

SCHEDULE I

Schedule I consists of:

Schedule I opiates

Schedule I opium derivatives

Schedule I hallucinogenic substances

Schedule I stimulants

Schedule I depressants

Schedule I Cannabimimetic agents

Schedule I temporarily listed substances subject to emergency scheduling by the United States Drug Enforcement Administration.

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances or that contains any of the substance's optical, positional and geometric isomers, salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation.

(1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other names: UR-144 and 1-pentyl-3-(2,2,3,3-tetramethylcyclopropyl)indole);

[1-(5-fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (Other names: 5-fluoro-UR-144 and 5-F-UR-144 and XLRll and 1-(5-flouro-pentyl)-3-(2,2,3,3- tetramethylcyclopropyl)indole);

N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide (Other names: APINACA, AKB48);

2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (Other names: 25I-NB0Me; 2C-I-NB0Me; 25I; Cimbi-5);

2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (Other names:25C-NB0Me; 2C-C-NB0Me; 25C; Cimbi-82);

2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (Other names:25B-NB0Me; 2C-B-NB0Me; 25B; Cimbi-36);

Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: PB-22; QUPIC);

Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 5-fluoro-PB-22; 5F-PB-22);

N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: AB-FUBINACA);

N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: ADB-PINACA);

4-methyl-N-ethylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 4-MEC; 2-(ethylamino)-1-(4-methylphenyl)propan-1-one);

4-methyl-alpha-pyrrolidinopropiophenone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 4-MePPP; MePPP; 4-methyl-[alpha]-pyrrolidinopropiophenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)-propan-1-one);

alpha-pyrrolidinopentiophenone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: [alpha]-PVP; [alpha]-pyrrolidinovalerophenone; 1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one);

Butylone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: bk-MBDB; 1-(1,3-benzodioxol-5-yl)-2-(methylamino) butan-1-one);

Pentedrone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: [alpha]-methylaminovalerophenone; 2-(methylamino)-1-phenylpentan-1-one);

Pentylone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: bk-MBDP; 1-(1,3-benzodioxol-5-yl)-2-(methylamino) pentan-1-one);

4-fluoro-N-methylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 4-FMC; flephedrone; 1-(4-fluorophenyl)-2-(methylamino) propan-1-one);

3-fluoro-N-methylcathinone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 3-FMC; 1-(3-fluorophenyl)-2-(methylamino) propan-1-one);

Naphyrone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: naphthylpyrovalerone; 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one); and,

alpha-pyrrolidinobutiophenone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: [alpha]-PBP; 1-phenyl-2-(pyrrolidin-1-yl)butan-1-one).

N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (Other names: "AB-CHMINACA");

N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (Other names: "AB-PINACA"); and

[1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl) methanone (Other names: "THJ- 2201").

*24. N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide (Other names: acetyl fentanyl)

Changes to the schedules are designated by an asterisk (*)

TRD-201503404

Lisa Hernandez

General Counsel

Department of State Health Services

Filed: August 25, 2015



Licensing Actions for Radioactive Materials

During the first half of August, 2015, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request, within 30 days of the date of publication of this notice, of a person affected by the Department's action. 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. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). A person affected may request a hearing as prescribed in 25 TAC § 289.205(c) by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing – MC 2835, PO Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
McAllen	Doctors Hospital at Renaissance Ltd.	L06731	McAllen	00	08/12/15

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Arlington	Heartplace P.A.	L06336	Arlington	08	08/14/15
Austin	St. Davids Healthcare Partnership L.P., L.L.P. dba St. Davids Medical Center	L00740	Austin	125	08/04/15
Big Spring	Manish Shroff M.D.	L05893	Big Spring	03	08/07/15
Converse	Pioneer Wireline Services L.L.C.	L06220	Converse	32	08/06/15
Corpus Christi	Cardinal Health	L04043	Corpus Christi	49	08/04/15
Corpus Christi	Spectrum Tracer Services L.L.C.	L06361	Corpus Christi	07	08/12/15
Dallas	Baylor University Medical Center	L01290	Dallas	131	08/05/15
Dallas	Triad Isotopes Inc.	L06334	Dallas	10	08/06/15
Denton	University of North Texas	L00101	Denton	103	08/07/15
El Paso	El Paso Healthcare System Ltd. dba Del Sol Medical Center	L02551	El Paso	66	08/11/15
El Paso	Southwest X-Ray L.P.	L05207	El Paso	17	08/14/15
Ft. Worth	John Peter Smith Hospital	L02208	Ft. Worth	82	08/03/15
Harlingen	Rio Grande Valley Isotopes L.L.C.	L06202	Harlingen	03	08/14/15
Houston	University of Houston Clear Lake	L02108	Houston	21	08/14/15
Houston	Memorial Hermann Health System dba Memorial Hermann Northeast Hospital	L02412	Houston	103	08/06/15
Houston	Memorial Hermann Health System dba Memorial Hermann Hospital The Woodlands	L03772	Houston	121	08/06/15
Houston	Methodist Health Centers dba Houston Methodist Willowbrook Hospital	L05472	Houston	55	08/04/15
La Porte	Stronghold Inspection Ltd.	L06695	La Porte	01	08/03/15

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Lewisville	Columbia Medical Center of Lewisville Subsidiary L.P. dba Medical Center of Lewisville	L02739	Lewisville	74	08/06/15
Lubbock	Texas Tech University	L01536	Lubbock	103	08/12/15
Mont Belvieu	Exxonmobil Chemical	L03119	Mont Belvieu	30	08/11/15
N. Richland Hills	Heartplace P.A.	L05548	N. Richland Hills	24	08/14/15
Plano	Heartplace P.A.	L05699	Plano	14	08/05/15
Plano	Texas Heart Hospital of the Southwest L.L.P. dba The Heart Hospital Baylor Plano	L06004	Plano	27	08/04/15
Plano	Truradiation Partners Plano L.L.C.	L06617	Plano	04	08/03/15
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	228	08/10/15
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	153	08/04/15
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	154	08/07/15
San Antonio	Icon Early Phase Services L.L.C.	L06680	San Antonio	01	08/07/15
Stafford	Aloki Enterprise Inc.	L06257	Stafford	34	08/14/15
Stafford	Aloki Enterprise Inc.	L06257	Stafford	33	08/11/15
Throughout TX	Eagle NDT L.L.C.	L06176	Abilene	23	08/13/15
Throughout TX	Fox NDE L.L.C.	L06411	Abilene	12	08/13/15
Throughout TX	City of Amarillo Dept. of Engineering	L02320	Amarillo	26	08/03/15
Throughout TX	FTS International Services L.L.C.	L06188	Ft. Worth	17	08/11/15
Throughout TX	Baker Hughes Oilfield Operations Inc.	L00446	Houston	181	08/14/15
Throughout TX	The University of Texas Health Science Center at Houston	L02774	Houston	72	08/05/15
Throughout TX	Onesubsea Processing Inc.	L05867	Houston	10	08/07/15
Throughout TX	Industrial Nuclear Company Inc.	L04508	La Porte	25	08/07/15
Throughout TX	Eagle Inspection L.L.C.	L06631	Nederland	04	08/14/15
Tyler	East Texas Medical Center	L00977	Tyler	160	08/07/15
Tyler	Nutech Inc.	L04274	Tyler	76	08/07/15
Tyler	Physician Reliance Network Inc. dba Tyler Cancer Center	L04788	Tyler	23	08/06/15
Waco	Hillcrest Baptist Medical Center	L00845	Waco	101	08/12/15
Waco	Waco Cardiology Associates	L05158	Waco	21	08/04/15
Webster	CHCA Clear Lake L.P. dba Clear Lake Regional Medical Center	L01680	Webster	94	08/05/15
Webster	Bay Area Regional Medical Center L.L.C.	L06655	Webster	04	08/04/15

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Houston	University of Texas Health Science Center at Houston	L03685	Houston	35	08/04/15
Mt. Pleasant	Titus County Memorial Hospital dba Titus Regional Medical Center	L02921	Mt. Pleasant	45	08/03/15
Sunray	Diamond Shamrock Refining Company L.P.	L04398	Sunray	23	08/13/15

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Houston	Texas Port Recycling L.P.	L06101	Houston	03	08/13/15
McAllen	Valley Cardiology P.A.	L04692	McAllen	26	08/12/15
McAllen	Cardiovascular Consultants of McAllen P.A.	L05126	McAllen	20	08/12/15
McAllen	Rio Grande Heart Specialist of South Texas	L05509	McAllen	07	08/12/15
Nacogdoches	Geoinstruments Inc.	L06563	Nacogdoches	01	08/06/15
San Antonio	University of Texas Health Science Center at San Antonio Edinburg	L06029	San Antonio	10	08/03/15

Filed: August 21, 2015



Licensing Actions for Radioactive Materials

TRD-201503281
 Lisa Hernandez
 General Counsel
 Department of State Health Services

During the second half of July, 2015, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Tx [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request, within 30 days of the date of publication of this notice, of a person affected by the Department's action. 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. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). A person affected may request a hearing as prescribed in 25 TAC § 289.205(c) by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing – MC 2835, PO Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Georgetown	Panasonic Corporation of North America	L06729	Georgetown	00	07/22/15

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Austin	Austin Heart P.L.L.C.	L04623	Austin	85	07/17/15
Austin	Freescale Semiconductor Inc.	L05347	Austin	12	07/29/15
Austin	Central Texas Medical Specialists P.L.L.C. dba Austin Cancer Centers	L06618	Austin	09	07/24/15
Baytown	Chevron Phillips Chemical Company L.P.	L00962	Baytown	45	07/29/15
College Station	Texas A&M University Env. Health & Safety	L06561	College Station	04	07/26/15
Corpus Christi	Radiology & Imaging of South Texas L.L.P. dba Alameda Imaging Center	L05182	Corpus Christi	43	07/22/15
Dallas	Texas Health Presbyterian Hospital Dallas	L04288	Dallas	36	07/27/15
Dallas	Heartplace P.A.	L04607	Dallas	68	07/20/15
Dallas	Cardinal Health	L05610	Dallas	33	07/24/15
Dallas	Valley View Surgicare Partners Ltd. dba Valley View Surgery Center	L05686	Dallas	06	07/22/15
Dallas	Healthtexas Provider Network dba Cardiology Consultants of Texas	L06572	Dallas	05	07/23/15
Fort Worth	Baylor All Saints Medical Center dba Baylor Scott & White All Saints Medical Center – Fort Worth	L02212	Fort Worth	95	07/29/15
Fort Worth	Fort Worth Surgicare Partners Ltd. dba Baylor Surgical Hospital at Fort Worth	L05668	Fort Worth	16	07/29/15
Fort Worth	Physicians Surgical Center of Fort Worth dba Physicians Surgical Center of Fort Worth	L05863	Fort Worth	06	07/17/15
Fort Worth	North Texas MCA L.L.C. dba Medical Center Alliance	L06687	Fort Worth	02	07/22/15

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Gatesville	Coryell County Memorial Hospital Authority dba Coryell Memorial Hospital	L02391	Gatesville	34	07/27/15
Houston	The Methodist Hospital dba Houston Methodist	L00457	Houston	200	07/21/15
Houston	Baylor College of Medicine	L00680	Houston	117	07/27/15
Houston	Baylor College of Medicine	L00680	Houston	118	07/27/15
Houston	SJ Medical Center L.L.C. dba St. Joseph Medical Center	L02279	Houston	83	07/27/15
Houston	Memorial Hermann Health System dba Memorial Hermann Hospital The Woodlands	L03772	Houston	120	07/21/15
Houston	Houston Cardiovascular Associates	L05070	Houston	17	07/17/15
Houston	Cardinal Health	L05536	Houston	50	07/22/15
Houston	Radiomedix Inc. dba Radiomedix	L06044	Houston	16	07/28/15
Irving	USMD Diagnostic Services L.L.C.	L06705	Irving	01	07/30/15
Lake Jackson	Brazosport Cardiology dba Pearland Heart Institute	L05359	Lake Jackson	09	07/22/15
Lubbock	Lubbock Heritage Hospital L.L.C. dba Grace Medical Center	L06040	Lubbock	10	07/20/15
Marble Falls	Scott & White Hospital – Marble Falls dba Baylor Scott & White Medical Center – Marble Falls	L06722	Marble Falls	01	07/30/15
Mineral Wells	Pecofacet US Inc.	L00330	Mineral Wells	44	07/23/15
Plano	Texas Health Resources dba Heart First	L06480	Plano	08	07/23/15
Plano	Texas Health Resources dba Heart First	L06480	Plano	09	07/17/15
Plano	Health Texas Provider Network dba The Heart Group	L06501	Plano	10	07/29/15
Port Lavaca	Union Carbide Corporation	L00051	Port Lavaca	98	07/22/15
San Antonio	VHS San Antonio Partners L.L.C. dba Baptist Health System	L00455	San Antonio	234	07/27/15
San Antonio	Methodist Healthcare System of San Antonio Ltd., L.L.P.	L00594	San Antonio	343	07/24/15
San Antonio	BHS Specialty Network Inc. dba Heart and Vascular Institute of Texas	L06482	San Antonio	07	07/20/15
San Marcos	Texas State University San Marcos	L03321	San Marcos	36	07/17/15
San Marcos	Texas State University San Marcos	L03321	San Marcos	37	07/29/15
Throughout Tx	Eagle NDT L.L.C.	L06176	Abilene	22	07/23/15
Throughout Tx	Fox NDE L.L.C.	L06411	Abilene	11	07/23/15
Throughout Tx	RWLS L.L.C. dba Renegade Services	L06307	Andrews	31	07/22/15
Throughout Tx	Lobo Labs L.L.C.	L06642	Corpus Christi	02	07/17/15
Throughout Tx	Professional Service Industries Inc.	L04940	Dallas	17	07/29/15
Throughout Tx	D&S Engineering Labs L.L.C.	L06677	Denton	03	07/23/15
Throughout Tx	Weaver Consultants Group L.L.C.	L06395	Fort Worth	06	07/23/15
Throughout Tx	Statewide Maintenance Company dba Diamond G Inspection Inc.	L06229	Houston	11	07/24/15
Throughout Tx	Control and Inspection Services USA Corp.	L06611	Houston	03	07/31/15
Throughout Tx	Texas Oncology P.A.	L05489	Longview	27	07/17/15
Throughout Tx	Chief Inspection Service L.L.C.	L06541	Longview	07	07/22/15
Throughout Tx	Eagle Inspection L.L.C.	L06631	Nederland	03	07/24/15
Throughout Tx	Fugro Consultants Inc.	L04322	Pasadena	111	07/28/15
Throughout Tx	Oilpatch NDT L.L.C.	L06718	Seabrook	01	07/24/15
Throughout Tx	Alliance Imaging Inc.	L05336	Texarkana	18	07/31/15
Victoria	Detar Hospital North	L03575	Victoria	22	07/23/15

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Waco	Hillcrest Baptist Medical Center	L00845	Waco	100	07/17/15
Waco	Providence Health Services of Waco	L01638	Waco	65	07/24/15
Waco	Providence Health Services of Waco	L01638	Waco	66	07/17/15

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Corpus Christi	Cardiology Associates of Corpus Christi	L04611	Corpus Christi	29	07/27/15
Denison	UHS of Texoma Inc. dba Texoma Medical Center	L01624	Denison	70	07/29/15
El Paso	El Paso Healthcare System Ltd. dba Del Sol Medical Center	L02551	El Paso	65	07/29/15
Garland	E+ PET Imaging XII L.P. dba PET Imaging of Garland	L05875	Garland	08	07/24/15
Houston	Geoscience Engineering & Testing Inc.	L05180	Houston	15	07/20/15
Lewisville	Columbia Medical Center of Lewisville Subsidiary L.P. dba Medical Center of Lewisville	L02739	Lewisville	73	07/24/15
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	152	07/24/15
Throughout Tx	Quality Consultants	L05028	Tyler	06	07/17/15
Denton	Texas Health Presbyterian Hospital Denton	L04003	Denton	52	07/30/15

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
El Paso	Dr. Ajai J. Agarwal M.D., P.A. dba Montwood Medical Center	L06144	El Paso	01	07/23/15
Mesquite	Lone Star HMA L.P. dba Dallas Regional Medical Center	L02428	Mesquite	51	07/17/15
Midland	Nova Training Inc. dba Nova Safety and Environmental	L06428	Midland	03	07/29/15
San Antonio	Cardiology Clinic of San Antonio P.L.L.C.	L04489	San Antonio	44	07/24/15
Throughout Tx	Precision NDT L.L.C.	L06399	Henderson	07	07/17/15
Throughout Tx	New Ventures Leasing L.L.C.	L06631	Sunset	02	07/24/15

TRD-201503288
 Lisa Hernandez
 General Counsel
 Department of State Health Services
 Filed: August 21, 2015

Texas Higher Education Coordinating Board

Notice of Intent to Engage in Negotiated Rulemaking - Block Scheduling for Certain Programs (Public Community Colleges)

House Bill 1583 passed by the 84th Texas Legislature requires public community colleges to establish associate degree or certificate block scheduling programs from the fields of allied health, nursing, or ca-

reer and technology for at least five programs not previously offered as block schedule programs. The legislation requires the Texas Higher Education Coordinating Board ("THECB" or "Board"), in consultation with public community colleges, to adopt rules for the administration of the block schedule programs and to prescribe a process by which a public community college may petition the THECB for an exception to the number of programs for which a block schedule is required on demonstration of hardship. The THECB intends to engage public community colleges in developing these rules through the negotiated rulemaking process in accordance with Texas Government Code Section 2008 (Negotiated Rulemaking Act).

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via email to all presidents of public community colleges soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their campus.

From this effort, 14 individuals responded (out of approximately 85 affected entities) and expressed an interest to participate or nominated someone from their institution to participate on the negotiated rulemaking committee for block scheduling. The positions held by the volunteers and nominees include a President, Vice Presidents, Deans, and a Department Chair. This indicates a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee for block scheduling:

1. Public community colleges; and
2. Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following 13 individuals to the negotiating rulemaking committee for block scheduling to represent affected parties and the agency:

Public Community Colleges

Ric Baser, President, Alamo Colleges-Northwest Vista College

Mary Kunz, Department Chair, Travel Tourism and Hospitality and Culinary Arts, Alamo Colleges-St. Philip's College

Carla Boone, Dean, Workforce and Continuing Education, College of the Mainland

Brenda Kihl, Executive Vice President, Collin College

Amy Burchett, Vice President for Academic and Student Affairs, Howard College

Glynnis Gaines, Dean, Health Professions, McLennan Community College

Guy Featherston, Dean, Health Professions, Navarro College

John Spradling, Vice President of Workforce Education, Paris Junior College

Alexander Okwonna, Dean of Natural and Health Sciences, San Jacinto College

Nancy Curè, Associate Vice Chancellor for Academic Affairs, Tarrant County College

Mark Smith, Vice President of Educational Services, Temple College

Shana Drury, Associate Dean of Instruction, Vernon College

Texas Higher Education Coordinating Board

Garry Tomerlin, Deputy Assistant Commissioner for Workforce

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

*Name and contact information of the person submitting the application;

*Description of how the persons are significantly affected by the rule and how their interests are different than those represented by the persons named above;

*Name and contact information of the person being nominated for membership; and

*Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee for block scheduling. Comments and applications for membership on the committee must be submitted by September 14, 2015 to:

Mary E. Smith, Ph.D.

Alternative Dispute Resolution Coordinator

Texas Higher Education Coordinating Board

P.O. Box 12788

Austin, Texas 78711

Fax: (512) 427-6127

Email: mary.smith@theccb.state.tx.us

TRD-201503438

William Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: August 26, 2015



Notice of Intent to Engage in Negotiated Rulemaking - Toward Excellence, Access and Success (TEXAS) Grant Program

The Texas Higher Education Coordinating Board ("THECB" or "Board") intends to engage in negotiated rulemaking to develop rules for the Toward EXcellence, Access and Success (TEXAS) Grant Program allocation methodology for public universities and health-related institutions of higher education beginning in FY17. This is in accordance with the provisions of Texas Education Code §61.0331.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via email to all presidents and chancellors at public universities and health-related institutions of higher education soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their campus.

From this effort, 19 individuals responded (out of approximately 48 affected entities) and expressed an interest to participate or nominated someone from their institution to participate on the negotiated rulemaking committee for the TEXAS Grant Program. The positions held by the volunteers and nominees include a President, and Vice Presidents/Associate Vice Presidents and Directors/Executive Directors of Financial Aid. This indicates a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee for the TEXAS Grant Program:

1. Public universities;
2. Public health-related institutions; and
3. Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following 19 individuals to the negotiating rulemaking committee for the TEXAS Grant Program to represent affected parties and the agency:

Public Universities

Katrina Brent, Senior Director of Outreach, College of Engineering, Lamar University

Lydia Hall, Director of Financial Aid, Sam Houston State University

Tammy Mitchum, Assistant Director of Financial Aid, Stephen F. Austin State University

Joseph Pettibon II, Associate Vice President for Academic Services, Texas A&M University

Clifton Jones, Interim Executive Director of Enrollment Management and Director of Student Financial Assistance, Texas A&M University-Central Texas

Dina Sosa, Dean of Enrollment Management and Retention, Texas A&M University-Commerce

Linda Ballard, Director of Financial Aid, Texas Southern University

Governor Jackson, Director of Financial Aid, Texas Woman's University

Diane Todd-Sprague, Director of Financial Aid, The University of Texas at Austin

M. Beth Tolan, Director of Financial Aid, The University of Texas at Dallas

Gary Edens, Vice President for Student Affairs, The University of Texas at El Paso

Lisa Blazer, Senior Associate Vice President for Student Affairs, The University of Texas at San Antonio

David Watts, President, The University of Texas of the Permian Basin

Arnold Trejo, Director of Financial Aid, The University of Texas Rio Grande Valley

Billy Satterfield, Executive Director of Student Financial Aid/Registrar and Director of Academic Records, University of Houston-Clear Lake

Tomikia LeGrande, Associate Vice President for Student Affairs, University of Houston-Downtown

Denee Thomas, Assistant Vice President for Enrollment Management, University of Houston-Victoria

Zelma DeLeon, Executive Director, Student Financial Aid and Scholarships, University of North Texas System

Texas Higher Education Coordinating Board

Charles Puls, Deputy Assistant Commissioner, Student Financial Aid Programs

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

*Name and contact information of the person submitting the application;

*Description of how the persons are significantly affected by the rule and how their interests are different than those represented by the persons named above;

*Name and contact information of the person being nominated for membership; and

*Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee for the TEXAS Grant Program. Comments and applications for membership on the committee must be submitted by September 14 to:

Mary E. Smith, Ph.D.

Alternative Dispute Resolution Coordinator

Texas Higher Education Coordinating Board

P.O. Box 12788 Austin, TX 78711

Fax: (512) 427-6127

Email: mary.smith@theeb.state.tx.us

TRD-201503420

William Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: August 26, 2015



Notice of Intent to Engage in Negotiated Rulemaking - Texas Research Incentive Program (Emerging Research Institutions)

Senate Bill 44, passed by the 84th Texas Legislature, Regular Session, relating to matching private grants given to enhance additional research activities at institutions of higher education, clarifies undergraduate research as an allowed match and undergraduate financial aid as a disallowed match. This clarification will require minor modifications to Title 19, Part 1, Texas Administrative Code Rule 15.10 (Texas Research Incentive Program). The Texas Higher Education Coordinating Board ("THECB" or "Board") intends to engage in negotiated rulemaking to modify the Texas Research Incentive Program rules. This is in accordance with the provisions of Texas Education Code 61.0331.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via email to the chancellors at Texas State University System, Texas Tech University System, The University of Texas System, University of Houston System, and University of North Texas System soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their system.

From this effort, 6 individuals responded (out of 6 affected entities) and expressed an interest to participate or nominated someone from their system to participate on the negotiated rulemaking committee for the Texas Research Incentive Program. The positions held by the volunteers and nominees include a Deputy Vice Chancellor for Finance, Vice Chancellor for Government Relations, Assistant Vice Chancellor for Academic Affairs, Acting Vice Chancellor for Research and Technology, and Assistant Vice President for Development. This indicates a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee for the Texas Research Incentive Program:

1. Texas State University System;
2. Texas Tech University System;

3. The University of Texas System;
4. University of Houston System;
5. University of North Texas System; and
6. Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following 6 individuals to the negotiating rulemaking committee for the Texas Research Incentive Program to represent affected parties and the agency:

System

Daniel Harper, Deputy Vice Chancellor for Finance, Texas State University System

Martha Brown, Vice Chancellor for Government Relations, Texas Tech University System

Kevin Lemoine, Assistant Vice Chancellor for Academic Affairs, The University of Texas System

Ramanan Krishnamoorti, Acting Vice Chancellor for Research and Technology Transfer, University of Houston System

Stan Walker, Assistant Vice President for Development, University of North Texas System

Texas Higher Education Coordinating Board

Paul Turcotte, Program Director, Finance and Resource Planning

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

*Name and contact information of the person submitting the application;

*Description of how the persons are significantly affected by the rule and how their interests are different than those represented by the persons named above;

*Name and contact information of the person being nominated for membership; and

*Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee for the Texas Research Incentive Program. Comments and applications for membership on the committee must be submitted by September 14, 2015 to:

Mary E. Smith, Ph.D.

Alternative Dispute Resolution Coordinator

Texas Higher Education Coordinating Board

P.O. Box 12788

Austin, Texas 78711

Fax: (512) 427-6127

Email: mary.smith@theccb.state.tx.us

TRD-201503421

William Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: August 26, 2015

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by 7710 INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Summerton, South Carolina.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of publication in the *Texas Register*, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201503418

Sara Waitt

General Counsel

Texas Department of Insurance

Filed: August 26, 2015

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Notice of Filing

The Texas Automobile Insurance Plan Association (TAIPA) filed a private passenger and commercial automobile insurance rate filing on August 18, 2015, under Insurance Code, Section 2151.202. The commissioner has not scheduled a hearing because the rate filed does not exceed 105 percent of the current average rate for each coverage written through the association. See Insurance Code, Section 2151.2041.

You may review TAIPA's rate filing by visiting the link at the bottom of this notice, or you may review it in the Office of the Chief Clerk at the Texas Department of Insurance during regular business hours at 333 Guadalupe St., Austin, Texas. For further information or to request a copy of the filing, please contact the Office of the Chief Clerk by phone at (512) 676-6585 or by email at ChiefClerk@tdi.texas.gov (refer to Petition No. A-0815-02).

If you wish to submit written comments related to the filing, please do so prior to September 16, 2015. You must provide two copies of your submission. Send one copy to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104; or email it to ChiefClerk@tdi.texas.gov. Send the other copy to J'ne Byckovski, Chief Actuary, Texas Department of Insurance, Property and Casualty Actuarial Office, Mail Code 105-5F, P.O. Box 149104, Austin, Texas 78714-9104; or you may email it to PCActuarial@tdi.texas.gov.

TRD-201503424

Sara Waitt

General Counsel

Texas Department of Insurance

Filed: August 26, 2015

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Texas Lottery Commission

Instant Game Number 1711 "Holiday Game Book"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1711 is "HOLIDAY GAME BOOK". The play style is "multiple games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1711 shall be \$20.00 per Ticket.

1.2 Definitions in Instant Game No. 1711.

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 for Game 1 (Stocking Stuffer), Game 2 (Happy HOLIDAYS), Game 3 (Season's Greetings), Game 4 (Season's Greetings), Game 5 (Winner Wishes), Game 6 (Holiday Riches): \$5.00, \$10.00, \$20.00, \$25.00, \$30.00, \$50.00, \$100, \$500, \$1,000, \$10,000, \$1,000,000, COLLECT SYMBOL, PEPPERMINT SYMBOL, 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, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49 and 50. An additional possible black Play Symbol for Game 1 (Stocking Stuffer) is CANDLE SYMBOL. Additional possible black Play Symbols for Game 2 (Happy HOLIDAYS) are: GINGERBREAD

MAN SYMBOL, BELL SYMBOL, ELF HAT SYMBOL, SCARF SYMBOL, CHRISTMAS TREE SYMBOL, STAR SYMBOL, ICE SKATE SYMBOL, SLED SYMBOL and SWEATER SYMBOL. An additional possible black Play Symbol for Game 3 (Season's Greetings) is GIFT SYMBOL. An additional possible black Play Symbol for Game 4 (Season's Greetings) is SNOWFLAKE SYMBOL. Additional possible black Play Symbols for Game 5 (Winner Wishes) are: MISTLETOE SYMBOL, SNOW GLOBE SYMBOL, CHRISTMAS LIGHTS SYMBOL, ANGEL SYMBOL, CHRISTMAS ORNAMENT SYMBOL, SNOWMAN SYMBOL, WREATH SYMBOL and REINDEER SYMBOL. Additional possible black Play Symbols for Game 6 (Holiday Riches) are: STOCKING SYMBOL, CHRISTMAS CARD SYMBOL, HOLIDAY DRUM SYMBOL, EAR MUFFS SYMBOL, SINGLE MITTEN SYMBOL, GARLAND SYMBOL, NORTH POLE SYMBOL and SHOVEL SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1711 - 1.2D

PLAY SYMBOLS FOR: GAME 1 (Stocking Stuffer), GAME 2 (Happy HOLIDAYS), GAME 3 (Season's Greetings), GAME 4 (Season's Greetings), GAME 5 (Winner Wishes) and GAME 6 (Holiday Riches)	CAPTION
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$25.00	TWY FIV
\$30.00	THIRTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUN
\$1,000	ONE THOU
\$10,000	10 THOU
\$1,000,000	1 MILLION
COLLECT SYMBOL	TO WIN
PEPPERMINT SYMBOL	PPRMNT
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH

24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY

PLAY SYMBOL FOR GAME 1 (Stocking Stuffer)	CAPTION
CANDLE SYMBOL	DBL

PLAY SYMBOLS FOR GAME 2 (Happy HOLIDAYS)	CAPTION
GINGERBREAD MAN SYMBOL	TRPL
BELL SYMBOL	BELL
ELF HAT SYMBOL	ELFHAT
SCARF SYMBOL	SCARF
CHRISTMAS TREE SYMBOL	TREE
STAR SYMBOL	STAR
ICE SKATE SYMBOL	SKATE
SLED SYMBOL	SLED
SWEATER SYMBOL	SWEATR

PLAY SYMBOL FOR GAME 3 (Season's Greetings)	CAPTION
GIFT SYMBOL	DBL

PLAY SYMBOL FOR GAME 4 (Season's Greetings)	CAPTION
SNOWFLAKE SYMBOL	DBL

PLAY SYMBOLS FOR GAME 5 (Winner Wishes)	CAPTION
MISTLETOE SYMBOL	MSLTOE
SNOW GLOBE SYMBOL	SNWGLB
CHRISTMAS LIGHTS SYMBOL	LIGHTS
ANGEL SYMBOL	ANGEL
CHRISTMAS ORNAMENT SYMBOL	ORNMT
SNOWMAN SYMBOL	SNWMN
WREATH SYMBOL	WREATH
REINDEER SYMBOL	RNDR

PLAY SYMBOLS FOR GAME 6 (Holiday Riches)	CAPTION
STOCKING SYMBOL	STCKNG
CHRISTMAS CARD SYMBOL	CARD
HOLIDAY DRUM SYMBOL	DRUM
EAR MUFFS SYMBOL	EARMFS
SINGLE MITTEN SYMBOL	MITT
GARLAND SYMBOL	GARLND
NORTH POLE SYMBOL	NRTHPL
SHOVEL SYMBOL	SHOVEL

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. 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 \$20.00.

G. Mid-Tier Prize - A prize of \$30.00, \$40.00, \$50.00, \$100, \$300 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$10,000 or \$1,000,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1711), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 1711-0000001-001.

K. Pack - A Pack of "HOLIDAY GAME BOOK" Instant Game Tickets contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 025 will both be exposed.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "HOLIDAY GAME BOOK" Instant Game No. 1711 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 "HOLIDAY GAME BOOK" GAME 1 (Stocking Stuffer) is determined once the latex on the Ticket is scratched off to expose 41 (forty-one) Play Symbols. GAME 1 (Stocking Stuffer) Play Instructions: The player scratches the entire play area to reveal 3 WINNING NUMBERS Play Symbols and 19 YOUR NUMBERS Play Symbols. If a player matches any of 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 "CANDLE" Play Symbol, the player wins DOUBLE the prize for that symbol! A prize winner in the "HOLIDAY GAME BOOK" GAME 2 (Happy HOLIDAYS) is determined once the latex on the Ticket is scratched off to expose 50 (fifty) Play Symbols. GAME 2 (Happy HOLIDAYS) Play Instructions: In the Main Play Area, the player scratches the entire play area to reveal 5 WINNING NUMBERS Play Symbols and 18 YOUR NUMBERS Play Symbols. If a player matches any of 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 "GINGERBREAD MAN" Play Symbol, the player wins TRIPLE the prize for that symbol! In the Match 3 Play Area, if a player reveals 3 matching prize amounts, the player wins that amount. In the BONUS Play Area, if a player matches 2 of 3 Play Symbols, the player WINS \$50! A prize winner in the "HOLIDAY GAME BOOK" GAME 3 (Season's Greetings) is determined once the latex on the Ticket is scratched off to expose 45 (forty-five) Play Symbols. GAME 3 (Season's Greet-

ings) Play Instructions: The player scratches the entire play area to reveal 5 WINNING NUMBERS Play Symbols and 20 YOUR NUMBERS Play Symbols. If a player matches any of 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 "GIFT" Play Symbol, the player wins DOUBLE the prize for that symbol! A prize winner in the "HOLIDAY GAME BOOK" GAME 4 (Season's Greetings) is determined once the latex on the Ticket is scratched off to expose 45 (forty-five) Play Symbols. GAME 4 (Season's Greetings) Play Instructions: The player scratches the entire play area to reveal 5 WINNING NUMBERS Play Symbols and 20 YOUR NUMBERS Play Symbols. If a player matches any of 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 "SNOWFLAKE" Play Symbol, the player wins DOUBLE the prize for that symbol! A prize winner in the "HOLIDAY GAME BOOK" GAME 5 (Winner Wishes) is determined once the latex on the Ticket is scratched off to expose 38 (thirty-eight) Play Symbols. GAME 5 (Winner Wishes) Play Instructions: In the Main Play Area, the player scratches the entire play area to reveal 5 WINNING NUMBERS Play Symbols and 15 YOUR NUMBERS Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. In the BONUS Play Area, if a player matches 2 of 3 Play Symbols, the player WINS \$50! A prize winner in the "HOLIDAY GAME BOOK" GAME 6 (Holiday Riches) is determined once the latex on the Ticket is scratched off to expose 38 (thirty-eight) Play Symbols. GAME 6 (Holiday Riches) Play Instructions: In the Main Play Area, the player scratches the entire play area to reveal 5 WINNING NUMBERS Play Symbols and 15 YOUR NUMBERS Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. In the BONUS Play Area, if a player matches 2 of 3 Play Symbols, the player WINS \$50! PEPPERMINT GAME Play Instructions: The player must count the number of "PEPPERMINT" Play Symbols revealed across all 6 (six) pages and wins the PRIZE according to the PRIZE LEGEND on the back of the Ticket. 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. In GAME 1 (Stocking Stuffer) exactly 41 (forty-one) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket; in GAME 2 (Happy HOLIDAYS) exactly 50 (fifty) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket; in GAME 3 (Season's Greetings) exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket; in GAME 4 (Season's Greetings) exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket; in GAME 5 (Winner Wishes) exactly 38 (thirty-eight) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket; in GAME 6 (Holiday Riches) 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. GAME 1 (Stocking Stuffer) will have exactly 41 (forty-one) Play Symbols; GAME 2 (Happy HOLIDAYS) will have exactly 50 (fifty) Play Symbols; GAME 3 (Season's Greetings) will have exactly 45 (forty-five) Play Symbols; GAME 4 (Season's Greetings) will have exactly 45 (forty-five) Play Symbols; GAME 5 (Winner Wishes) will have exactly 38 (thirty-eight) Play Symbols; and GAME 6 (Holiday Riches) will have exactly 38 (thirty-eight) Play Symbols. The Play Symbols will appear 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 Ticket's Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the Ticket's Play Symbols 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 Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

GENERAL:

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns of either Play Symbols or Prize Symbols.

B. A game book will win as indicated by the prize structure.

C. The top prize can be won on any game.

D. A game book can win up to twenty-five (25) times.

E. The "PEPPERMINT" Play Symbol will only appear within a YOUR NUMBERS Play Area.

F. The "PEPPERMINT" Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

G. The "PEPPERMINT" Play Symbol will never appear more than six (6) times across all play areas.

H. On game books not winning with the "PEPPERMINT" Play Symbol, there will always be at least one (1) "PEPPERMINT" Play Symbol showing on at least one (1) of the play areas.

I. Game books not winning with the "PEPPERMINT" Play Symbol will never contain three (3) or more "PEPPERMINT" Play Symbols across all play areas.

J. On game books winning with the "PEPPERMINT" Play Symbol, all three (3) to six (6) "PEPPERMINT" Play Symbols are to appear over more than one GAME. Only one (1) "PEPPERMINT" Play Symbol can appear per GAME.

K. The "COLLECT" Prize Symbol will only appear with the "PEPPERMINT" Play Symbol.

GAME 1 (Stocking Stuffer):

L. The play area consists of nineteen (19) YOUR NUMBERS Play Symbols, nineteen (19) Prize Symbols and three (3) WINNING NUMBERS Play Symbols.

M. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches.

N. On winning Tickets, a non-winning Prize Symbol will not match a winning Prize Symbol.

O. On winning and Non-Winning Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

P. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

Q. The three (3) WINNING NUMBERS Play Symbols will all be different.

R. All YOUR NUMBERS Play Symbols on a Ticket will be different from each other, except as required by the prize structure to create multiple wins.

S. The "CANDLE" Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

T. The "CANDLE" Play Symbol will never appear on Non-Winning Tickets.

U. The "CANDLE" Play Symbol will win DOUBLE the prize, as per the prize structure.

GAME 2 (Happy HOLIDAYS):

V. Main Play Area: The play area consists of eighteen (18) YOUR NUMBERS Play Symbols, eighteen (18) Prize Symbols and five (5) WINNING NUMBERS Play Symbols.

W. Main Play Area: Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches.

X. Main Play Area: On winning Tickets, a non-winning Prize Symbol will not match a winning Prize Symbol.

Y. Main Play Area: On winning and Non-Winning Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

Z. Main Play Area: On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

AA. Main Play Area: The five (5) WINNING NUMBERS Play Symbols will all be different.

BB. Main Play Area: All YOUR NUMBERS Play Symbols on a Ticket will be different from each other, except as required by the prize structure to create multiple wins.

CC. Main Play Area: The "GINGERBREAD MAN" Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

DD. Main Play Area: The "GINGERBREAD MAN" Play Symbol will never appear on Non-Winning Tickets.

EE. Main Play Area: The "GINGERBREAD MAN" Play Symbol will win TRIPLE the prize, as per the prize structure.

FF. Match 3 Play Area: Players can win up to one (1) time in this play area.

GG. Match 3 Play Area: This play area consists of six (6) Prize Symbols.

HH. Match 3 Play Area: There will never be more than three (3) matching Prize Symbols.

II. Match 3 Play Area: No more than one pair of matching non-winning Prize Symbols will appear on a winning Ticket.

JJ. BONUS Play Area: There will never be more than two (2) matching Play Symbols in this play area.

KK. BONUS Play Area: You can win up to one (1) time in this play area.

GAME 3 (Season's Greetings):

LL. The play area consists of twenty (20) YOUR NUMBERS Play Symbols, twenty (20) Prize Symbols and five (5) WINNING NUMBERS Play Symbols.

MM. WINNING NUMBERS Play Symbols in GAME 3 will not appear as a YOUR NUMBERS Play Symbol in GAME 4.

NN. WINNING NUMBERS Play Symbols in GAME 3 will not appear as a WINNING NUMBERS Play Symbol in GAME 4.

OO. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches.

PP. On winning Tickets, a non-winning Prize Symbol will not match a winning Prize Symbol.

QQ. On winning and Non-Winning Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

RR. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

SS. The five (5) WINNING NUMBERS Play Symbols will all be different.

TT. All YOUR NUMBERS Play Symbols on a Ticket will be different from each other, except as required by the prize structure to create multiple wins.

UU. The "GIFT" Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

VV. The "GIFT" Play Symbol will never appear on Non-Winning Tickets.

WW. The "GIFT" Play Symbol will win DOUBLE the prize, as per the prize structure.

GAME 4 (Season's Greetings):

XX. The play area consists of twenty (20) YOUR NUMBERS Play Symbols, twenty (20) Prize Symbols and five (5) WINNING NUMBERS Play Symbols.

YY. WINNING NUMBERS Play Symbols in GAME 4 will not appear as a YOUR NUMBERS Play Symbol in GAME 3.

ZZ. WINNING NUMBERS Play Symbols in GAME 4 will not appear as a WINNING NUMBERS Play Symbol in GAME 3.

AAA. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches.

BBB. On winning Tickets, a non-winning Prize Symbol will not match a winning Prize Symbol.

CCC. On winning and Non-Winning Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

DDD. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

EEE. The five (5) WINNING NUMBERS Play Symbols will all be different.

FFF. All YOUR NUMBERS Play Symbols on a Ticket will be different from each other, except as required by the prize structure to create multiple wins.

GGG. The "SNOWFLAKE" Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

HHH. The "SNOWFLAKE" Play Symbol will never appear on Non-Winning Tickets.

III. The "SNOWFLAKE" Play Symbol will win DOUBLE the prize, as per the prize structure.

GAME 5 (Winner Wishes):

JJJ. Main Play Area: The play area consists of fifteen (15) YOUR NUMBERS Play Symbols, fifteen (15) Prize Symbols and five (5) WINNING NUMBERS Play Symbols.

KKK. Main Play Area: Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches.

LLL. Main Play Area: On winning Tickets, a non-winning Prize Symbol will not match a winning Prize Symbol.

MMM. Main Play Area: On winning and Non-Winning Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

NNN. Main Play Area: On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

OOO. Main Play Area: The five (5) WINNING NUMBERS Play Symbols will all be different.

PPP. Main Play Area: All YOUR NUMBERS Play Symbols on a Ticket will be different from each other, except as required by the prize structure to create multiple wins.

QQQ. BONUS Play Area: There will never be more than two (2) matching Play Symbols in this play area.

RRR. BONUS Play Area: You can win up to one (1) time in this play area.

GAME 6 (Holiday Riches):

SSS. Main Play Area: The play area consists of fifteen (15) YOUR NUMBERS Play Symbols, fifteen (15) Prize Symbols and five (5) WINNING NUMBERS Play Symbols.

TTT. Main Play Area: Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches.

UUU. Main Play Area: On winning Tickets, a non-winning Prize Symbol will not match a winning Prize Symbol.

VVV. Main Play Area: On winning and Non-Winning Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

WWW. Main Play Area: On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

XXX. Main Play Area: The five (5) WINNING NUMBERS Play Symbols will all be different.

YYY. Main Play Area: All YOUR NUMBERS Play Symbols on a Ticket will be different from each other, except as required by the prize structure to create multiple wins.

ZZZ. BONUS Play Area: There will never be more than two (2) matching Play Symbols in this play area.

AAAA. BONUS Play Area: You can win up to one (1) time in this play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "HOLIDAY GAME BOOK" Instant Game prize of \$20.00, \$30.00, \$40.00, \$50.00, \$100, \$300 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 \$30.00, \$40.00, \$50.00, \$100, \$300 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 "HOLIDAY GAME BOOK" Instant Game prize of \$1,000, \$10,000 or \$1,000,000, the claimant must sign the winning

Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HOLIDAY GAME BOOK" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. 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 "HOLIDAY GAME BOOK" 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 "HOLIDAY GAME BOOK" 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 4,080,000 Tickets in the Instant Game No. 1711. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1711 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$20	408,000	10.00
\$30	81,600	50.00
\$40	163,200	25.00
\$50	408,000	10.00
\$100	163,200	25.00
\$300	8,330	489.80
\$500	1,020	4,000.00
\$1,000	272	15,000.00
\$10,000	9	453,333.33
\$1,000,000	4	1,020,000.00

*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 3.31. 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. 1711 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. 1711, 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-201503312

Bob Biard

General Counsel

Texas Lottery Commission

Filed: August 21, 2015



Instant Game Number 1780 "Solid Gold"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1780 is "Solid GOLD". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1780 shall be \$2.00 per Ticket.

1.2 Definitions in Instant Game No. 1780.

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: 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, GOLD BAR SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$1,000 and \$30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1780 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
GOLD BAR SYMBOL	DBL
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
\$30,000	30 THOU

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. 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 \$2.00, \$4.00, \$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 or \$30,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1780), 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: 1780-0000001-001.

K. Pack - A Pack of "Solid GOLD" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "Solid GOLD" Instant Game No. 1780 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 "Solid GOLD" 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 YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "GOLD BAR" 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 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 Texas Lottery Instant 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 matching play data, spot for spot.

B. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

C. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

D. No matching WINNING NUMBERS Play Symbols on a Ticket.

E. A Ticket may have up to two matching non-winning Prize Symbols unless restricted by other parameters, play action or prize structure.

F. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

G. The "GOLD BAR" (DBL) Play Symbol will only appear as dictated by the prize structure.

H. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e. 5 and \$5).

2.3 Procedure for Claiming Prizes.

A. To claim a "Solid GOLD" Instant Game prize of \$2.00, \$4.00, \$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 "Solid GOLD" Instant Game prize of \$1,000 or \$30,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "Solid GOLD" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. 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 "Solid GOLD" 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 "Solid GOLD" 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 9,000,000 Tickets in the Instant Game No. 1780. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1780 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	918,000	9.80
\$4	576,000	15.63
\$5	108,000	83.33
\$10	180,000	50.00
\$20	108,000	83.33
\$50	39,300	229.01
\$100	9,000	1,000.00
\$1,000	16	562,500.00
\$30,000	6	1,500,000.00

*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 4.64. 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. 1780 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. 1780, 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-201503310
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: August 21, 2015



Public Utility Commission of Texas

Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 18, 2015, for an amendment to certificated service area boundaries within Tom Green County, Texas.

Docket Style and Number: Application of Concho Valley Electric Cooperative, Inc. for a Certificate of Convenience and Necessity Service Area Exception within Tom Green County, Texas. Docket Number 45050.

The Application: Concho Valley Electric Cooperative, Inc. (CVEC) filed an application for a service area boundary change to allow CVEC to provide service to a specific customer located within the certificated

service area of AEP Texas North Company (AEP TNC) and Southwest Texas Electric Cooperative, Inc. (SWTEC). Approximately 4/5s of the parcel to be developed is located in CVEC's singly-certificated area while the remaining 1/5 is located in an area dually-certificated to AEP TNC and SWTEC. There is currently no service to this area by AEP TNC and SWTEC, therefore it would more economical for the property to be serviced by CVEC. AEP TNC and SWTEC have provided affidavits of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than September 11, 2015 by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45050.

TRD-201503302
 Adriana Gonzales
 Rules Coordinator
 Public Utility Commission of Texas
 Filed: August 21, 2015



Notice of Application to Determine Whether Certain Markets with Populations Less than 100,000 Should Remain Regulated

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition filed on August 21, 2015, seeking to determine whether certain markets of the company with populations of less than 100,000 in Texas should remain regulated.

Docket Style and Number: Petition of Verizon Southwest to Deregulate Certain Markets, Docket Number 45056.

The Application: GTE Southwest Incorporated d/b/a Verizon Southwest (Verizon) filed a petition seeking to determine whether certain markets of the company with populations of less than 100,000 in Texas should remain regulated. The commission has jurisdiction over the petition pursuant to Public Utility Regulatory Act (PURA) §65.052. Verizon claims that 10 of its local exchange markets meet the criteria

for deregulation set out in PURA §65.052(b)(2). In making a determination, PURA §65.052(b)(2) provides that the commission may not determine that a market should remain regulated if the population in the area included in the market is less than 100,000 and, in addition to the incumbent local exchange company (ILEC), there are at least two competitors operating in all or part of the market that are unaffiliated with the ILEC and provide voice communications service without regard to the delivery technology.

The 10 exchanges affected are: Blanco, Collinsville, George West, Gordonville, Jarrell, Premont, Port O'Connor, Rosharon, Rusk, and Seadrift.

Pursuant to PURA §65.052(a), the commission shall issue a final order no later than 90 days after the petition is filed. The 90th day in this case is November 19, 2015.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477 as soon as possible as a deadline to intervene will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45056.

TRD-201503413
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 25, 2015



Notice of Filing to Withdraw Services Pursuant to 16 Texas Administrative Code §26.208(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) to withdraw services pursuant to 16 Texas Administrative Code (TAC) §26.208(h).

Docket Title and Number: Application of Mid-Plains Rural Telephone Cooperative, Inc. to Withdraw Services Pursuant to 16 TAC §26.208(h) - Docket Number 44997.

The Application: On July 31, 2015, pursuant to 16 TAC §26.208(h), Mid-Plains Rural Telephone Cooperative, Inc. (Mid-Plains) filed an application with the Commission to withdraw certain optional operator services from its Member Services Tariff including: Collect Call, Bill to Third Number, Bill to Credit Card, Line Status Verification/Busy Line Verification, and Busy Line Interrupt. Mid-Plains explained that it is discontinuing these services based on lack of customer demand and because there are currently no subscribers to this service. The proceedings were docketed and suspended on August 4, 2015, to allow adequate time for review and intervention.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Docket Number 44997.

TRD-201503242
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 19, 2015



Texas Department of Transportation

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website:

www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html

Or visit www.txdot.gov, How Do I Find Hearings and Meetings, choose Hearings and Meetings, and then choose Schedule.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4500 or 1-800-68-PI-LOT.

TRD-201503392
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: August 25, 2015



University of Houston System

Notice of Procurement

The University of Houston System announces a Request for Proposal (RFP) for consultant services pursuant to Government Code, Chapter 2254, Subchapter B.

RFP730-15105, Business Review of Master Services Partnership Agreement

Purpose:

The University invites you to submit a proposal for consultant services to include providing: (a) an independent, comprehensive business review of a university master services revenue partnership agreement, including recommendations for any revisions to agreement terms; (b) guidance and assistance in any potential re-negotiation of this agreement; (c) guidance to the university regarding the business viability of its sports and entertainment facilities as revenue-generating/entertainment venues; (d) development of a comprehensive five year business plan and pro forma for the current agreement and/or any re-negotiated agreement; and (e) recommendations to the university for contract, financial, operational, and management policies, procedures, or systems related to the current or any potential re-negotiated agreement.

Eligible Applicants:

Consulting firms with related knowledge and experience in:

- Providing business reviews of partnership agreements for athletic and entertainment facilities in locations of similar type and size as the University of Houston.
- Providing guidance to clients regarding the negotiation or re-negotiation of business terms, the viability of sports and entertainment facilities, the development of a multi-year business plan and pro forma, and recommendations for policies, procedures, or systems to better manage the facilities agreement.

Services to be performed:

Narrative business review and recommendations for revision (with justification for revision). Verbal and narrative guidance to assist the uni-

versity with potential renegotiation of contract terms. Development of narrative business plan and pro forma for five operating years. Narrative policies and procedure recommendations for operating such a partnership, including a contract management checklist.

Finding by Chief Executive Officer, Renu Khator:

This is a complex agreement, and there are concerns about the current and potential performance of this particular agreement. After reviewing the current status, and discussing this matter with staff, the evaluation of these services can only be conducted by a party that is familiar with the entertainment and athletic markets, the holistic expertise for this evaluation is not part of the competencies of employees at the University. Thus, it is necessary for the University to engage a consultant to evaluate and review the current and future potential for this agreement, and make recommendations for improving the structure of this agreement, as appropriate.

Review and Award Criteria:

All proposals will be evaluated by appointed representatives of the University in accordance with the following procedures:

1. Purchasing will receive and review each RFP proposal to ensure it meets the requirements of the RFP. Qualified proposals will be given to the selection committee.
2. Each member of the selection committee will independently evaluate the qualified proposals according to the criteria in section IX of the RFP, except for price, and send their evaluations to Purchasing. Price will be evaluated by Purchasing.
3. Purchasing will combine the committee's scores to determine which proposal received the highest combined score.
4. Purchasing will notify the respondent with the highest score that the University intends to contract with them.

Deadlines: UH must receive proposals according to instructions in the RFP package on or before October 5, 2015 at 11:00 a.m. (CDT).

Obtaining a copy of the RFP: Copies will be available on the Electronic State Business Daily (ESBD) at <http://esbd.cpa.state.tx.us/>.

The sole point of contact for inquiries concerning RFP is:

Tim Henry

UH Purchasing

5000 Gulf Freeway, ERP 1, Rm. 201

Houston, Texas 77204

Phone: (713) 743-0244

Email: tshenry2@central.uh.edu

TRD-201503443

Renu Khator

Chief Executive Officer

University of Houston System

Filed: August 26, 2015



Notice of Procurement

The University of Houston System announces a Request for Proposal (RFP) for consultant services pursuant to Government Code, Chapter 2254, Subchapter B.

RFP730-15106, Project Delivery Review Services

Purpose:

The University invites you to submit a proposal for services that include providing: (a) comprehensive review of the University of Houston System's project delivery processes and recommendations for improvement, with the required deliverable of a comprehensive, step-by-step project delivery manual that becomes the property of the System and can be used for major and minor construction and renovation projects, and is delivered to the System in a non-proprietary software format that can be edited; (b) annual project delivery training for project managers and departmental users who utilize these services; (c) a review of current construction and renovation policies and procedures and recommendations for improvement that are in accordance with UHS, state and federal policies and statutes; (d) a review of current project staffing levels, position descriptions, and incumbents with the intent of providing recommendations for restructuring as appropriate to meet current project workload (may include recommendations for out-sourced project management, as appropriate); (e) a review of current Facilities Planning & Construction overhead ("tap") fee and project financials, and use this information to develop a departmental business plan; (f) an instrument for use in measuring customer feedback as it relates to project delivery; (g) an analysis of project close-out processes and recommendations for improvement; and (h) recommendations to increase the usage of historically underutilized businesses (HUBs) on construction and renovation projects.

Eligible Applicants:

Consulting firms with related knowledge and experience in:

Providing general assessments and recommendations for construction and renovation projects, including staffing, policies and procedures, financials, project close-out, customer feedback, and use of historically underutilized businesses for clients of similar size and type as the University of Houston.

Assisting clients improve the construction and renovation delivery process.

Services to be performed:

Development of overall schedule to complete activities associated with this proposal.

Review UHS project delivery processes, narrative recommendations, as well as presentation of recommendations to management.

Revised project delivery manual in both hard copy and electronic format for major and minor capital construction projects.

Development and administration of annual project delivery training over the five-year term of the agreement.

Review of construction and renovation policies and procedures and narrative recommendations for improvement.

Review of current staffing levels and incumbents and narrative recommendations for improvement, including recommendations for how and if the use of out-sourced project management services should be implemented.

Review of current tap fee levels, and development of a business plan that is transmitted electronically and in hard copy format.

Development of customer service instrument to be used to measure project and project manager performance.

Analysis of project close-out procedures and narrative recommendations for improvement.

Development of recommendations to increase usage of HUBs on construction and renovation projects.

Finding by Chief Executive Officer, Renu Khator:

As a number of projects will be launched related to the issuance of University Campus Construction bonds, this review will enable the department to ensure that procedures and project delivery tools are in place to provide appropriate management oversight of these projects. This review will include analyzing the staffing levels, and how and if outsourcing certain components of outsourcing would be appropriate to ensure appropriate oversight.

Additionally, this review will provide insight as to whether there are further opportunities within project delivery to engage and support historically underutilized businesses. I have found the expertise to engage in this comprehensive review does not exist at the University; therefore, it is necessary to engage a consultant to complete this review.

Review and Award Criteria:

All proposals will be evaluated by appointed representatives of the University in accordance with the following procedures:

1. Purchasing will receive and review each RFP proposal to ensure it meets the requirements of the RFP. Qualified proposals will be given to the selection committee.
2. Each member of the selection committee will independently evaluate the qualified proposals according to the criteria in section IX of the RFP, except for price, and send their evaluations to Purchasing. Price will be evaluated by Purchasing.
3. Purchasing will combine the committee's scores to determine which proposal received the highest combined score.
4. Purchasing will notify the respondent with the highest score that the University intends to contract with them.

Deadlines: UH must receive proposals according to instructions in the RFP package on or before October 5, 2015 at 2:00 p.m. (CDT).

Obtaining a copy of the RFP: Copies will be available on the Electronic State Business Daily (ESBD) at <http://esbd.cpa.state.tx.us/>.

The sole point of contact for inquiries concerning RFP is:

Tim Henry

UH Purchasing

5000 Gulf Freeway, ERP 1, Rm. 201

Houston, Texas 77204

Phone: (713) 743-0244

Email: tshenry2@central.uh.edu

TRD-201503444

Renu Khator

Chief Executive Officer

University of Houston System

Filed: August 26, 2015



Texas Veterans Commission

Request for Applications Concerning the Texas Veterans Commission Fund for Veterans' Assistance, General Assistance Grant Program

Filing Authority. The availability of grant funds is authorized by Texas Government Code, §434.017.

Eligible Applicants. The Texas Veterans Commission (TVC) is requesting applications from organizations eligible to apply for grant funding. Eligible Applicants are units of local government, IRS Code §501(c)(19) posts or organizations of past or present members of the

Armed Forces, IRS Code §501(c)(3) private nonprofit corporations authorized to conduct business in Texas, Texas chapters of IRS Code §501(c)(4) veterans service organizations, and nonprofit organizations authorized to do business in Texas with experience providing services to veterans.

Description. The purpose of this Request for Applications (RFA) is to seek grant applications from Eligible Applicants for General Assistance reimbursement grants using funds from the Fund for Veterans' Assistance (FVA). The TVC is authorized to award grants to Eligible Applicants addressing the needs of Texas veterans and their families. These needs include, but are not limited to: emergency financial assistance; transportation services; legal services, excluding criminal defense; family, child, and supportive services; employment, training/job placement assistance; and development of professional services networks.

The Texas Veterans Commission has currently established the following priorities: widespread distribution of grants across the state; encourage a diversity of services within geographic regions; outstanding grant applications; and the service category of financial assistance. The priorities for this General Assistance Grant, Series 16-B, will be outlined in the RFA.

Grant Funding Period. Grants awarded will begin on July 1, 2016, and end on June 30, 2017. All grants are reimbursement grants. Reimbursement will only be made for those expenses that occur within the term of this grant. No pre-award spending is allowed. TVC shall disburse 10% of the awarded grant amount upon execution of the Notice of Grant Award (NOGA).

Grant Amounts. For this solicitation, the minimum grant award will be \$5,000. The maximum grant award for regional projects will be \$300,000. The maximum grant award for statewide projects will be \$500,000.

Number of Grants to be Awarded and Total Available. The anticipated total amount of grant funding available for this award is \$5,000,000. The number of awards made will be contingent upon the amount of funding requested and awarded to Eligible Applicants. This total amount of grant funding is subject to change due to availability of funds.

Selection Criteria. TVC staff will use an eligibility checklist and evaluation rubric to review all applications. All eligible applications will be evaluated and forwarded to the FVA Advisory Committee for its review and consideration. The FVA Advisory Committee will prepare a funding recommendation to be presented to the Commission for action. The Commission makes the final funding decisions based upon the FVA Advisory Committee's funding recommendation. Applications must address all requirements of the RFA to be considered for funding.

TVC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this solicitation. There is no expectation of continued funding. This issuance does not obligate TVC to award a grant or pay any costs incurred in preparing a response.

Requesting the Materials Needed to Complete an Application. All information needed to respond to this solicitation will be posted to the TVC website at <http://tvc.texas.gov/Apply-For-A-Grant.aspx> on or about Friday, September 4, 2015. All applications must be submitted both electronically and in hard-copy, as per the posted solicitation guidelines.

Further Information. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants; all questions must

be submitted via email to grants@tvc.texas.gov. All questions and the written answers will be posted on the TVC website as per the RFA.

Deadline for Receipt of an Application. Applications must be received by TVC by 5:00 pm. on Thursday, October 29, 2015, at the Stephen F. Austin Building, 1700 N. Congress Avenue, Suite 800, Austin, Texas 78701 to be considered for funding.

TRD-201503427

Charles Catoe

Director, Fund for Veterans Assistance

Texas Veterans Commission

Filed: August 26, 2015



Request for Applications Concerning the Texas Veterans Commission Fund for Veterans' Assistance, Housing 4 Texas Heroes Grant Program

Filing Authority. The availability of grant funds is authorized by Texas Government Code, §434.017.

Eligible Applicants. The Texas Veterans Commission (TVC) is requesting applications from organizations eligible to apply for grant funding. Eligible Applicants are units of local government, IRS Code §501(c)(19) posts or organizations of past or present members of the Armed Forces, IRS Code §501(c)(3) private nonprofit corporations authorized to conduct business in Texas, Texas chapters of IRS Code §501(c)(4) veterans service organizations, and nonprofit organizations authorized to do business in Texas with experience providing services to veterans.

Description. The purpose of this Request for Applications (RFA) is to seek grant applications from Eligible Applicants for Housing 4 Texas Heroes reimbursement grants using funds from the Fund for Veterans' Assistance (FVA). The TVC is authorized to award grants to Eligible Applicants addressing the needs of Texas veterans and their families. These needs include, but are not limited to: homeless Veteran support, Veteran homelessness prevention, temporary assistance to families of Veterans undergoing treatment at Texas medical facilities, and home modification assistance.

The Texas Veterans Commission has currently established the following priorities: widespread distribution of grants across the state; encourage a diversity of services within geographic regions; and outstanding grant applications. The priorities for this 2016-17 Housing 4 Texas Heroes Grant, will be outlined in the RFA.

Grant Funding Period. Grants awarded will begin on July 1, 2016, and end on June 30, 2017. All grants are reimbursement grants. Reimbursement will only be made for those expenses that occur within the term of this grant. No pre-award spending is allowed. TVC shall disburse 10% of the awarded grant amount upon execution of the Notice of Grant Award (NOGA).

Grant Amounts. For this solicitation, the minimum grant award will be \$5,000. The maximum grant award will be \$500,000.

Number of Grants to be Awarded and Total Available. The anticipated total amount of grant funding available for this award is \$4,500,000. The number of awards made will be contingent upon the amount of funding requested and awarded to Eligible Applicants. This total amount of grant funding is subject to change due to availability of funds.

Selection Criteria. TVC staff will use an eligibility checklist and evaluation rubric to review all applications. All eligible applications will be evaluated and forwarded to the FVA Advisory Committee for its

view and consideration. The FVA Advisory Committee will prepare a funding recommendation to be presented to the Commission for action. The Commission makes the final funding decisions based upon the FVA Advisory Committee's funding recommendation. Applications must address all requirements of the RFA to be considered for funding.

TVC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this solicitation. There is no expectation of continued funding. This issuance does not obligate TVC to award a grant or pay any costs incurred in preparing a response.

Requesting the Materials Needed to Complete an Application. All information needed to respond to this solicitation will be posted to the TVC website at <http://tvc.texas.gov/Apply-For-A-Grant.aspx> on or about Friday, September 4, 2015. All applications must be submitted both electronically and in hard-copy, as per the posted solicitation guidelines.

Further Information. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants; all questions must be submitted via email to grants@tvc.texas.gov. All questions and the written answers will be posted on the TVC website as per the RFA.

Deadline for Receipt of an Application. Applications must be received by TVC by 5:00 P.M. on Thursday, October 29, 2015, at the Stephen F. Austin Building, 1700 N. Congress Avenue, Suite 800, Austin, Texas 78701 to be considered for funding.

TRD-201503429

Charles Catoe

Director, Fund for Veterans' Assistance

Texas Veterans Commission

Filed: August 26, 2015



Request for Applications Concerning the Texas Veterans Commission Fund for Veterans' Assistance, Veterans Mental Health Grant Program

Filing Authority. The availability of grant funds is authorized by Texas Government Code, §434.017.

Eligible Applicants. The Texas Veterans Commission (TVC) is requesting applications from organizations eligible to apply for grant funding. Eligible Applicants are units of local government, IRS Code §501(c)(19) posts or organizations of past or present members of the Armed Forces, IRS Code §501(c)(3) private nonprofit corporations authorized to conduct business in Texas, Texas chapters of IRS Code §501(c)(4) veterans service organizations, and nonprofit organizations authorized to do business in Texas with experience providing services to veterans.

Description. The purpose of this Request for Applications (RFA) is to seek grant applications from Eligible Applicants for Veterans Mental Health reimbursement grants using funds from the Fund for Veterans' Assistance (FVA). The TVC is authorized to award grants to Eligible Applicants addressing the needs of Texas veterans and their families. These needs include, but are not limited to: clinical counseling services, peer-delivered services, and non-clinical support services.

The Texas Veterans Commission has currently established the following priorities: widespread distribution of grants across the state; encourage a diversity of services within geographic regions; and outstanding grant applications. The priorities for this 2016-17 Veterans Mental Health Grant will be outlined in the RFA.

Grant Funding Period. Grants awarded will begin on July 1, 2016, and end on June 30, 2017. All grants are reimbursement grants. Reimbursement will only be made for those expenses that occur within the term of this grant. No pre-award spending is allowed. TVC shall disburse 10% of the awarded grant amount upon execution of the Notice of Grant Award (NOGA).

Grant Amounts. For this solicitation, the minimum grant award will be \$5,000. The maximum grant award will be \$500,000.

Number of Grants to be Awarded and Total Available. The anticipated total amount of grant funding available for this award is \$2,000,000. The number of awards made will be contingent upon the amount of funding requested and awarded to Eligible Applicants. This total amount of grant funding is subject to change due to availability of funds.

Selection Criteria. TVC staff will use an eligibility checklist and evaluation rubric to review all applications. All eligible applications will be evaluated and forwarded to the FVA Advisory Committee for its review and consideration. The FVA Advisory Committee will prepare a funding recommendation to be presented to the Commission for action. The Commission makes the final funding decisions based upon the FVA Advisory Committee's funding recommendation. Applications must address all requirements of the RFA to be considered for funding.

TVC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this solicitation. There

is no expectation of continued funding. This issuance does not obligate TVC to award a grant or pay any costs incurred in preparing a response.

Requesting the Materials Needed to Complete an Application. All information needed to respond to this solicitation will be posted to the TVC website at <http://tvc.texas.gov/Apply-For-A-Grant.aspx> on or about Friday, September 4, 2015. All applications must be submitted both electronically and in hard-copy, as per the posted solicitation guidelines.

Further Information. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants; all questions must be submitted via email to grants@tvc.texas.gov. All questions and the written answers will be posted on the TVC website as per the RFA.

Deadline for Receipt of an Application. Applications must be received by TVC by 5:00 P.M. on Thursday, October 29, 2015, at the Stephen F. Austin Building, 1700 N. Congress Avenue, Suite 800, Austin, Texas 78701 to be considered for funding.

TRD-201503428
Charles Catoe
Director, Fund for Veterans' Assistance
Texas Veterans Commission
Filed: August 26, 2015



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://texasattorneygeneral.gov/og/open-government>

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

Additional information about state government may be found here:
<http://www.texas.gov>

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

How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

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.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 40 (2015) is cited as follows: 40 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 "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 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, 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 *Texas Register* is available in an .html version as well as a .pdf 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 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

1 TAC §91.1.....950 (P)

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