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Annaliese M. Fisher



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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/opinopen/opengovt.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
<http://www.state.tx.us/>

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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.

THE ATTORNEY GENERAL

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

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

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

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

Request for Opinions

RQ-0747-GA

Requestor:

The Honorable Kevin Bailey
Chair, Committee on Urban Affairs
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Re: Validity of a municipal rule regarding promotional examinations under the Fire Fighter and Police Officer Civil Service Act (RQ-0747-GA)

Briefs requested by November 14, 2008

RQ-0748-GA

Requestor:

The Honorable Aaron Pena
Chair, Committee on Criminal Jurisprudence
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Re: Whether a justice of the peace is authorized to hear truancy cases from school districts located outside of his precinct (RQ-0748-GA)

Briefs requested by November 17, 2008

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

TRD-200805569
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: October 22, 2008



Opinions

Opinion No. GA-0671

The Honorable David H. Aken

San Patricio County Attorney

San Patricio County Courthouse, Room 108

Sinton, Texas 78387

Re: Whether under section 81.002(a) of the Local Government Code, the county commissioner's oath provision, a county may employ a sub-contracting company that is owned by a commissioner (RQ-0701-GA)

SUMMARY

The county commissioners' oath provision, Local Government Code section 81.002, prohibits a county judge or commissioner from being directly or indirectly interested in a contract with the county. Chapter 171 of the Local Government Code excepts from section 81.002 a county judge's or county commissioner's interest in a business entity or real property. Such a contract with the county in which a county judge or commissioner is interested is governed by chapter 171 and not prohibited by section 81.002.

Opinion No. GA-0672

The Honorable Wayne Smith
Chair, Committee on County Affairs
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: Whether the Cedar Bayou Navigation District may regulate structures on and near Cedar Bayou in certain circumstances (RQ-0702-GA)

SUMMARY

The Cedar Bayou Navigation District may regulate structures on and near Cedar Bayou to the extent that they may affect water transportation activities, are incident to or accommodating of commerce or navigation, or are incident to or necessary in the proper operation and development of ports and waterways. The District's authority encompasses authority to establish a permitting system.

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

TRD-200805570
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: October 22, 2008



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). 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 31. NATURAL RESOURCES AND CONSERVATION

PART 4. SCHOOL LAND BOARD

CHAPTER 155. LAND RESOURCES

SUBCHAPTER A. COASTAL PUBLIC LANDS

31 TAC §155.17

The School Land Board adopts on an emergency basis new §155.17, concerning emergency provisions authorizing actions necessary to respond to the impacts from Hurricane Ike within the bays and estuaries of the Texas coast. The section is adopted on an emergency basis due to the imminent peril to the public health, safety and welfare caused by Hurricane Ike. This rule does not apply to gulf-fronting beaches or other areas fronting or in the Gulf of Mexico.

Hurricane Ike made landfall on September 12 - 13, 2008, with an extreme tidal surge, and caused substantial coastal flooding, damage and bay or estuary shoreline impacts in Orange, Jefferson, Chambers, Galveston, Harris and Brazoria counties, Texas. Following the landfall and the inland movement of Hurricane Ike, concerned littoral property owners and citizens with interest in coastal public lands along the Texas coast requested information and assistance regarding their ability to rebuild or repair structures on submerged state-owned land or to take actions to address bay or estuary shoreline impacts. Numerous structures on coastal public lands and bay or estuary shoreline protection structures, including bulkheads, were damaged or destroyed as a result of hurricane and tropical storm force winds, storm surge, extreme tides, and dangerous and battering wave action. The School Land Board determined it was necessary to adopt an emergency rule allowing immediate authorization for repair and rebuilding of permitted structures and to conduct response efforts and to waive certain fees in order to provide protection from further injury, damage, or destruction from subsequent storm events.

The School Land Board has determined that a takings impact assessment (TIA), pursuant to §2007.043 of the Texas Government Code, is not required for the adoption of this rule because this rule is not applicable to private property. This rule is adopted in response to a real and substantial threat to public health, safety, and welfare.

The new section is adopted on an emergency basis under Texas Natural Resources Code, §33.064 that provides the School Land Board with the authority to adopt procedural and substantive rules that it considers necessary to administer, implement, and enforce Chapter 33 of the Texas Natural Resources Code.

§155.17. Emergency Provisions Authorizing Actions Necessary to Respond to the Effects of Hurricane Ike Along Bay and Estuary Shorelines of the Texas Coast.

(a) Purpose. The purposes of this rule are to:

(1) allow littoral property owners who have authorization to place and maintain certain structures on state-owned submerged lands in certain Texas bays and estuaries to repair and rebuild certain structures damaged or destroyed by Hurricane Ike;

(2) take certain actions to address the effects of Hurricane Ike; and

(3) waive certain fees.

(b) Applicability. This rule applies only to Orange, Jefferson, Chambers, Galveston, Harris and Brazoria counties, Texas. This rule shall be in effect for 120 days from the date of filing with the Office of the Secretary of State. Upon expiration of the 120-day period, the Board, at its discretion, may extend this rule for a time period not to exceed 60 days. This rule does not apply to gulf-fronting beaches or other areas fronting or in the Gulf of Mexico.

(c) Definitions. For the purposes of this section only, the following terms and words shall have the following meaning.

(1) Board--School Land Board.

(2) Contract--Any lease, easement, registration, permit or other document issued by the General Land Office authorizing a project on state-owned submerged land.

(3) GISWEB--A collection of dynamic interactive mapping websites that give the user access to the collection of spatial data and aerial photography available at the General Land Office at <http://gisweb1.glo.state.tx.us/website/gisweb.cfm>.

(4) Grantee--Any person, company or entity that is currently under contract from the General Land Office authorizing a project on submerged state-owned land.

(5) Person--An individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, or any governmental entity.

(6) Structures--As used in this section, "structure" is defined in Texas Natural Resources Code, §33.004(10).

(d) Structures authorized by current General Land Office contracts.

(1) Rebuilding certain structures on state owned submerged land in the bays and estuaries to pre-Hurricane Ike dimensions.

(A) Grantees shall adhere to any specific contractual provisions regarding repair and rebuilding structures as provided in the current contract unless permitted otherwise as provided in paragraph (2) of this subsection.

(B) Grantees must rebuild or repair the structures to the original specifications and conditions as provided in the current contract in the absence of specific provisions regarding repair and rebuilding as described in the previous paragraph unless permitted otherwise as provided in paragraph (2) of this subsection.

(2) Increasing or decreasing the size of structure.

(A) If grantee desires to rebuild the same type of structure but smaller than provided in the current contract, grantee may rebuild under the current contract, and General Land Office will amend the current contract and waive the amendment fee. If the General Land Office field office staff deems it appropriate, the General Land Office may convert the contract to a Structure Registration as authorized in §155.5 of this title (relating to Registration of Structures) and waive the one-time registration fee.

(B) If General Land Office field office staff determine that a grantee must rebuild a longer structure than provided in current contract and the need for a longer structure is due to bay or estuary shoreline change caused by Hurricane Ike, grantee may rebuild under the current contract. The General Land Office will amend the contract to reflect the new dimensions, waive the amendment fee, and adjust the fees accordingly.

(C) If grantee, in consultation with the General Land Office, determines that an authorized structure is substantially destroyed due to damage caused by Hurricane Ike and grantee determines that it is necessary to rebuild to a different configuration than previously authorized, grantee must obtain approval for the modification from the General Land Office. Field office staff of the General Land Office will evaluate the proposal, and staff may approve an enlargement of the authorized structure provided there are minimal impacts to critical habitat, the project will not impact safety or navigation, and the proposal complies with existing statutes, rules and guidelines. The General Land Office will amend the contract to reflect the new dimensions, waive the amendment fee, and adjust the rental fees accordingly.

(e) Bay and Estuary Shoreline.

(1) Grantees may rebuild previously permitted bulkheads on state-owned submerged land to the pre-Hurricane Ike location as indicated on the most recent pre-storm aerial photographs available on GISWEB, and may fill to the same location as existed immediately prior to the storm and as specified in the current contract.

(2) Littoral property owners with bulkheads previously constructed on private property may rebuild the bulkhead and may fill to the same location as existed immediately prior to Hurricane Ike as indicated on the most recent pre-storm aerial photographs available on GISWEB.

(3) Littoral property owners with bay or estuary shoreline that was not protected by a bulkhead may fill to the same location as existed immediately prior to Hurricane Ike as indicated on the most recent pre-storm aerial photographs available on GISWEB; provided, however, this section does not authorize placement of a new bulkhead on state-owned submerged land. Any bay or estuary shoreline that was restored to the pre-Hurricane Ike location must be stabilized by riprap, vegetative planting or some other means of shoreline stabilization.

(4) UNDER NO CIRCUMSTANCE DOES THIS RULE AUTHORIZE ANY PERSON TO CONSTRUCT ANY BULKHEAD OR PLACE FILL THAT EXTENDS THE BAY OR ESTUARY SHORELINE INTO THE ADJACENT WATER BODY BEYOND THE PRE-STORM LOCATION AS INDICATED ON THE MOST RECENT PRE-HURRICANE IKE AERIAL PHOTOGRAPHS AVAILABLE ON GISWEB ON FILE AT THE GENERAL LAND OFFICE UNLESS THE LITTORAL PROPERTY OWNER PRESENTS EVIDENCE SATISFACTORY TO THE GENERAL LAND OFFICE THAT THE LOCATION OF THE PRE-HURRICANE IKE BAY OR ESTUARY SHORELINE WAS IN A DIFFERENT LOCATION.

(f) NOTICE. THIS RULE IS PROMULGATED TO ASSIST COASTAL LITTORAL PROPERTY OWNERS RESPONDING TO THE CALAMITOUS IMPACTS OF HURRICANE IKE. UNDER NO CIRCUMSTANCE SHALL THIS RULE BE CONSTRUED AS THE BOARD'S ACQUIESCENCE OR AGREEMENT TO THE LOCATION OF THE BAY OR ESTUARY SHORELINE INDICATED ON THE MOST RECENT PRE-HURRICANE IKE AERIAL PHOTOGRAPHS AVAILABLE ON GISWEB AS THE BOUNDARY BETWEEN STATE AND PRIVATE LAND (PARTICULARLY IF STATE-OWNED SUBMERGED LAND WAS PREVIOUSLY FILLED WITHOUT APPROPRIATE AND LEGAL AUTHORIZATION). THIS RULE WILL NOT OPERATE TO WAIVE CLAIMS THAT HAVE BEEN OR MAY BE ASSERTED BY THE STATE FOR TITLE TO ILLEGALLY FILLED STATE-OWNED SUBMERGED LANDS. ANY PERSON WHO PLACES FILL OR ANY OTHER STRUCTURE ON STATE-OWNED SUBMERGED LAND BEYOND THE SHORELINE INDICATED ON THE MOST RECENT PRE-HURRICANE IKE AERIAL PHOTOGRAPHS AVAILABLE ON GISWEB WITHOUT A PROPER EASEMENT OR LEASE FROM THE STATE UNDER CHAPTER 33 OF THE NATURAL RESOURCES CODE IS LIABLE FOR A PENALTY OF NOT LESS THAN \$50 OR MORE THAN \$1,000 A DAY FOR EACH DAY THAT A VIOLATION OCCURS AS PROVIDED IN THE NATURAL RESOURCES CODE §51.302.

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

Filed with the Office of the Secretary of State on October 15, 2008.

TRD-200805465

Trace Finley

Deputy Commissioner, Policy and Governmental Affairs, General Land Office

School Land Board

Effective Date: October 15, 2008

Expiration Date: February 11, 2009

For further information, please call: (512) 475-1859



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 50. LEGISLATIVE SALARIES AND PER DIEM

1 TAC §50.1

The Texas Ethics Commission proposes an amendment to §50.1, to set the legislative per diem as required by the Texas Constitution, Article III, §24a. This section sets the per diem for members of the legislature and the lieutenant governor at \$168 for each day during the regular session and any special session.

David A. Reisman, Executive Director, has determined that for each odd numbered year of the first five years this rule is in effect there will be a fiscal implication of \$433,160 for the state and no fiscal implication for local government as a result of enforcing or administering this rule. This amount may increase if any special sessions are called.

Mr. Reisman also has determined that for each year of the first five years this rule is in effect the public benefit expected as a result of adoption of the proposed rule is a determination, in compliance with the Texas Constitution, of the per diem entitled to be received by each member of the legislature and the lieutenant governor under the Texas Constitution, Article III, §24, and Article IV, §17, during the regular session and any special session.

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

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

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

This amendment is proposed under the Texas Constitution, Article III, §24a, and the Government Code, Chapter 571, §571.062.

The amended section affects the Texas Constitution, Article III, §24, Article III, §24a, and Article IV, §17.

§50.1. Legislative Per Diem.

(a) The legislative per diem is \$168 [~~\$154~~]. The per diem is intended to be paid to each member of the legislature and the lieutenant governor for each day during the regular session and for each day during any special session in 2009 [~~2008~~].

(b) If necessary, this [~~This~~] rule shall be applied retroactively to ensure payment of the \$168 [~~\$154~~] per diem for 2009 [~~2008~~].

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

Filed with the Office of the Secretary of State on October 15, 2008.

TRD-200805451

Natalia Luna Ashley

General Counsel

Texas Ethics Commission

Earliest possible date of adoption: November 30, 2008

For further information, please call: (512) 463-5800



TITLE 4. AGRICULTURE

PART 7. TEXAS AGRICULTURE RESOURCES PROTECTION AUTHORITY

CHAPTER 101. GENERAL RULES

SUBCHAPTER A. ROUTINE PROCEDURES

4 TAC §§101.1 - 101.3, 101.20

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

The Texas Department of Agriculture (the department) proposes to repeal Chapter 101, Subchapter A, §§101.1 - 101.3 and §101.20, concerning Routine Procedures for the Agriculture Resources Protection Authority (Authority). The repeal of these sections is proposed because the Authority was abolished by law by the Texas Legislature during the 79th Legislative Session (2005); and the sections were, in effect, voided and no longer effective upon abolishment of the Authority.

Jimmy Bush, assistant commissioner for pesticide programs, has determined that for the first five years the proposed repeal

is in effect there will be no fiscal implications for state or local government.

Mr. Bush has also determined that for the first five years the proposed repeal is in effect the public benefit of enforcing or administering the repeal will be the elimination of unnecessary rules. No economic impact is expected to microbusiness, small business or individuals required to comply with the proposed repeal.

Comments on the proposal must be submitted within 30 days following the publication of the proposal in the *Texas Register*. Comments may be submitted to Jimmy Bush, Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

The repeal of §§101.1 - 101.3 and 101.20 is proposed under Texas Agriculture Code, §12.016, which authorizes the department to adopt rules as necessary to administer its duties under the Texas Agriculture Code. The code that will be affected by the proposal is the Texas Agriculture Code, Chapter 12.

§101.1. *Definitions.*

§101.2. *Meetings.*

§101.3. *Gifts.*

§101.20. *Submission of Reports by Agencies.*

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

Filed with the Office of the Secretary of State on October 20, 2008.

TRD-200805534

Dolores Alvarado Hibbs

General Counsel, Texas Department of Agriculture

Texas Agriculture Resources Protection Authority

Earliest possible date of adoption: November 30, 2008

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



PART 13. PRESCRIBED BURNING BOARD

CHAPTER 227. CERTIFICATION, RECERTIFICATION, RENEWAL SUBCHAPTER A. CERTIFICATION REQUIREMENTS

4 TAC §227.5

The Prescribed Burning Board (the board) proposes an amendment to Chapter 227, §227.5, concerning the date by which annual proof of insurance must be provided to the board by certified prescribed burn managers. The amendment to §227.5 is proposed to change the annual date by which proof of insurance is to be submitted to the board from June 1st to December 31st of each year. The board is making this change to have a more reasonable, easily remembered date that also is closer to the burn season, which begins in the new year.

Jimmy Bush, Assistant Commissioner for Pesticide Programs, has determined that for the first five-year period the amended

section is in effect, there will be no fiscal implications for the state or local government as a result of enforcing or administering the amended section.

Mr. Bush also has determined that for each year of the first five years the proposed amended section is in effect, the public benefit anticipated as a result of enforcing the amended section will be that the department will be provided verification of insurance carried by certified prescribed burn managers right before the burn season begins, to assure that the managers' insurance is up to date during the burn season. There will be no cost to micro-businesses, small businesses or individuals required to comply with the proposed amendment.

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

The amendment to §227.5 is proposed under §153.041 of the Natural Resources Code, which authorizes the board to be established within the department and to administer the prescribed burn manager certification program; §153.047, which authorizes the board to adopt standards for prescribed burning and insurance requirements for certified prescribed burn managers.

The code that will be affected by this proposal is the Natural Resources Code, Chapter 153.

§227.5. *Proof of Insurance.*

Documentation as required by § [See-] 226.4 of this title (relating to Insurance Requirements) shall be provided to the Board annually to show proof of insurance by December 31st [~~on or before June 1st~~]. Failure to provide timely proof of insurance shall render certification invalid. Documentation for any limiting scope of the applicable insurance must be provided. Any limitation on coverage shall be disclosed. The following is considered valid documentation:

- (1) Certificate of insurance from insurance company; or
- (2) any other documentation approved by the Board.

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

Filed with the Office of the Secretary of State on October 20, 2008.

TRD-200805533

Dolores Alvarado Hibbs

General Counsel, Texas Department of Agriculture

Prescribed Burning Board

Earliest possible date of adoption: November 30, 2008

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



TITLE 10. COMMUNITY DEVELOPMENT

PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

CHAPTER 257. BOARD FOR OFFICE OF RURAL COMMUNITY AFFAIRS

SUBCHAPTER D. TEXAS RURAL PHYSICIAN ASSISTANT LOAN REIMBURSEMENT PROGRAM

10 TAC §257.109

The Office of Rural Community Affairs (Office) proposes an amendment to §257.109 for the State Office of Rural Health area funds.

The amendment to subsection (b) changes the name of the Office's "Executive Committee" to "Board". The amendment to subsection (c)(5) includes information in regards to the Executive Director's authority to waive provisions of rules, if necessary, and will address unusual or exceptional circumstances under this section.

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

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

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

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

Comments on the proposal may be submitted to Theresa Cruz, Director of State Office of Rural Health, Office of Rural Community Affairs, P.O. Box 12877, Austin, Texas 78711, telephone: (512) 936-6701. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The amendment is proposed under §487.052 of the Texas Government Code, which provides the Board with authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the proposed amendment.

§257.109. *Application Process, Recipient Selection and Reimbursement of Educational Loans.*

(a) (No change.)

(b) Selection of recipients is contingent upon the availability of funds. Applicants practicing in areas with the highest degree of shortage and/or lowest Index of Medical Services (IMU) score are selected over other applicants. Selected recipients are recommended by the Office's Executive Director and approved by the Office's Board [Executive Committee]. Applicants are notified whether or not they are accepted for loan reimbursement after the annual application period is closed and recipients are selected.

(c) Eligible education loans of selected recipients are reimbursed by annual payments made at a time specified by the Office and under the following conditions:

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

(5) recipients are responsible for payment of any and all state and federal taxes to which this loan reimbursement is subject. The

Executive Director of the Office may waive provisions of these rules, if necessary, to address unusual or exceptional circumstances.

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

Filed with the Office of the Secretary of State on October 17, 2008.

TRD-200805516

Charles S. (Charlie) Stone

Executive Director

Office of Rural Community Affairs

Earliest possible date of adoption: November 30, 2008

For further information, please call: (512) 936-6726



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER C. APPROVAL OF NEW ACADEMIC PROGRAMS AND ADMINISTRATIVE CHANGES AT PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES

19 TAC §5.51

The Texas Higher Education Coordinating Board proposes new §5.51 concerning Publishing of Doctoral Program Data. Specifically, the creation of the new section is needed to implement the Board's adoption of a recommendation from the Graduate Education Advisory Committee. This new rule will require public institutions with doctoral programs to publish on their web sites certain data relating to those doctoral programs.

Dr. Mary E. Smith, Acting Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the chapter is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Smith has also determined that for each year of the first five years the chapter is in effect, the public benefit anticipated as a result of administering the section will be a more informed public, as prospective students will be able to survey the performance of various doctoral programs at different institutions throughout Texas and make choices about where they wish to pursue their doctoral degree. Another public benefit will be better doctoral programs, as institutions will be required to use the data regarding their programs to review and improve those programs. There

is no effect on small or micro businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Mary E. Smith, Acting Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or Mary.Smith@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new rule is proposed under the Texas Education Code, Chapter 61, Subchapter G, which provides the Coordinating Board with the authority to regulate the awarding or offering of degrees, credit toward degrees, and the use of certain terms.

The new rule affects implementation of Texas Education Code, Subchapter G, §§61.301 - 61.319.

§5.51. Publishing of Doctoral Program Data.

Each public university and health-related institution with one or more doctoral programs on its program inventory shall collect and publish information on its website regarding the "18 Characteristics of Doctoral Education" as approved by the Board, on a schedule determined by the Commissioner. Each institution must develop and implement a plan for using the 18 Characteristics for ongoing evaluation and quality improvement of each doctoral program.

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

Filed with the Office of the Secretary of State on October 20, 2008.

TRD-200805529

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: January 29, 2009

For further information, please call: (512) 427-6114



CHAPTER 7. DEGREE GRANTING
COLLEGES AND UNIVERSITIES OTHER THAN
TEXAS PUBLIC INSTITUTIONS
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§7.3 - 7.9, 7.15, 7.17

The Texas Higher Education Coordinating Board proposes amendments to §§7.3 - 7.9, 7.15, and 7.17, concerning General Provisions. This chapter currently provides for the issuance of certificates of authority and certificates of authorization for degree-granting postsecondary institutions other than Texas public institutions. Specifically, the new language to §7.4(g) (Obtaining a Certificate of Authorization or a Certificate of Authority to Operate in Texas) reflects a change in the process regarding institutions that offer only religious degrees. Rather than the institution requesting a Certificate of Authorization, they can request a letter stating that the Board does not have oversight over their institution as long as they offer only religious degrees. Section 7.5(14)(B) (Standards of Operation of Institutions) relating to curriculum is revised to remove the

maximum number of hours for a baccalaureate degree. The section incorrectly identified 139 semester credit hours or 180 quarter credit hours as the maximum. However, this maximum only applied to teaching programs and should not be applied to all baccalaureate degrees. Section 7.6(b)(4) (Recognition of Accrediting Agencies) clarifies the process to be followed by an accrediting agency if it loses or voluntarily relinquishes its recognition. It directs the accrediting agency to provide official notification to the Texas institutions that they accredit and to the Board that the accrediting agency no longer is recognized in the State of Texas. Subsequently, the institutions have 30 days to contact the Board on whether they plan to apply for a Certificate of Authority with the Texas Higher Education Coordinating Board, seek another accrediting agency's approval, or relinquish their degree granting authority. Sections 7.7(g)(5), 7.8(3) and 7.9(c)(3)(G) clarify the requirement that an institution must submit a certificate of approval or a letter of exemption from the Texas Workforce Commission as part of the application for a Certificate of Authority. Other minor clarifying language changes are incorporated throughout the chapter.

Dr. Mary Smith, Acting Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the chapter is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Smith has also determined that for each year of the first five years the chapter is in effect, the public benefit anticipated as a result of administering the section will be a quicker, more effective, and more appropriate Board response to the requirements and needs of institutions wishing to operate in Texas. There is no effect on small or micro businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Mary Smith, Acting Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or mary.smith@thehb.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 61, Subchapter G, and Texas Education Code Chapter 132, which provides the Coordinating Board with the authority to regulate the awarding or offering of degrees, credit toward degrees, and the use of certain terms.

The amendments affect implementation of Texas Education Code, Subchapter G, §§61.301 - 61.319, Subchapter H, §§61.401 - 61.405 and Texas Education Code Chapter 132.

§7.3. Definitions.

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

(1) - (21) (No change.)

(22) Exempt institution--An institution operating in Texas that is accredited by an agency recognized by the Board under §7.2 of this chapter (relating to Authority) or a career school or college that applies for and is declared exempt under this chapter, by the Texas Workforce Commission as described in Texas Education Code, §61.003(8), or Texas Education Code Chapter 132, respectively. Exempt institutions may still have to comply with certain Board rules.

(23) - (35) (No change.)

§7.4. *Obtaining a Certificate of Authorization or a Certificate of Authority to Operate in Texas.*

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

(g) An institution offering only religious degrees may request a letter stating that the Board does not have oversight. [~~certificate of authorization affirming exempt status.~~]

(h) (No change.)

§7.5. *Standards for Operation of Institutions.*

All institutions that operate within the State of Texas are expected to meet the following standards. Standard (2) relating to Qualifications of Institutional Officers and Standard (3) relating to policy making do not apply to branch campuses operating under §7.10 of this chapter (relating to Operation of Branch Campuses, Extension Centers or Other Off-Campus Units, Occasional Courses and Changes in Level). These standards will be enforced through the certificate of authority process or the alternative certificate of authority process. Standards addressing the same principles will be enforced by recognized accrediting agencies. Particular attention will be paid to the institution's commitment to education, responsiveness to recommendations and suggestions for improvement, and, in the case of a renewal of a certificate of authority, record of improvement and progress. These standards represent generally accepted administrative and academic practices and principles of accredited postsecondary institutions in Texas. Such practices and principles are generally set forth by institutional and specialized accrediting bodies and the academic and professional organizations.

(1) - (13) (No change.)

(14) Curriculum

(A) (No change.)

(B) Academic associate degrees must consist of at least sixty (60) semester credit hours and not more than sixty-six (66) semester credit hours or ninety (90) quarter credit hours and not more than ninety-nine (99) quarter credit hours. Applied associate degrees must consist of at least sixty (60) semester credit hours and not more than seventy-two (72) semester credit hours or ninety (90) quarter credit hours and not more than one hundred eight (108) quarter hours. A baccalaureate degree must consist of at least one hundred twenty (120) semester credit hours or one hundred eighty (180) quarter credit hours. A master's degree must consist of at least thirty (30) semester credit hours and not more than thirty-six (36) semester credit hours or forty-five (45) quarter credit hours and not more than fifty-four (54) quarter credit hours of graduate level work past the baccalaureate degree. [Academic associate degrees and applied associate degrees must consist of at least sixty (60) semester credit hours or ninety (90) quarter credit hours and not more than (66) semester credit hours or (99) quarter credit hours. Applied associate degrees must consist of at least sixty (60) semester credit hours or ninety (90) quarter credit hours and not more than seventy-two (72) semester credit hours or (108) quarter hours. A baccalaureate degree must consist of at least one hundred twenty (120) semester credit hours or one hundred eighty (180) quarter credit hours and not more than one hundred thirty-nine (139) semester credit hours or two hundred eight (208) quarter credit hours. A master's degree must consist of at least thirty (30) semester credit hours or forty-five (45) quarter credit hours and not more than thirty-six (36) semester credit hours or fifty-four (54) quarter credit hours of graduate level work past the baccalaureate degree.]

(C) - (D) (No change.)

(15) - (24) (No change.)

§7.6. *Recognition of Accrediting Agencies.*

(a) (No change.)

(b) Other Information, Denial or Withdrawal of Recognition and Appeals.

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

(4) An accrediting agency that loses or voluntarily relinquishes its recognition must provide written notice via a traceable instrument simultaneously to the institutions in Texas over which the accrediting agency provides oversight, and to the Board. An institution operating in Texas as an exempt institution pursuant to §7.4 of this chapter (relating to Obtaining a Certificate of Authorization or a Certificate of Authority to Operate in Texas) when its recognized accrediting agency loses or voluntarily relinquishes its recognition must within thirty (30) days of the date of notification from the accrediting agency, notify Board staff as to whether it intends to: [will have ninety (90) days to apply for a Certificate of Authority or to reach agreement with the Board on a schedule for ceasing its operations in Texas.]

(A) seek accreditation from another recognized accrediting agency;

(B) apply for a Certificate of Authority; or

(C) reach agreement with the Board on a schedule for ceasing its degree-granting authority in Texas.

(5) Once the institution notifies the Board of its decision, it will have ninety (90) days to begin implementation.

(6) [~~(5)~~] An accrediting agency or institution affected by any final decision under this subchapter may appeal that decision as provided in Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

§7.7. *Certificate of Authority.*

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

(g) Application for certificate of authority.

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

(5) Evidence of approval from the Texas Workforce Commission must be submitted to the Board. The Board will not approve an application for a certificate of authority unless the Texas Workforce Commission has approved the institution to offer a course of instruction or has been issued an exemption.

(h) - (l) (No change.)

§7.8. *Alternative Certificate of Authority.*

In lieu of the standard certification of authority requirements for institutions and their agents in §§7.7, 7.11, and 7.12 of this chapter, an institution may obtain an alternative certificate of authority to issue degrees as provided by this section. Alternative certificates of authority shall be issued by the Commissioner and are temporary, being valid for twelve (12) months, after which a regular certificate of authority shall be required. A site visit shall be conducted by Board staff during the initial twelve month period.

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

(3) An institution seeking an alternative certificate of authority shall submit to the Board a completed application, which must demonstrate it meets, or has the ability to meet, depending on circumstances, the standards set out in §7.5 of this chapter (relating to Standards for Operation of Institutions); a signed and dated affirmation statement, acknowledging compliance with certification criteria set forth in this section; and a notarized attestation statement signed by the chief executive officer or equivalent and evidence of approval from the Texas Workforce Commission. The Board will not approve an application for an Alternative Certificate of Authority unless the Texas Workforce Commission has approved the institution to offer a course

of instruction or has been issued an exemption. The application form shall contain:

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

(C) The regulations, rules, constitutions, bylaws, or other regulations established for the governance [~~government~~] and operation of the institution;

(D) - (G) (No change.)

(4) - (8) (No change.)

§7.9. *Certificate of Authority for Career Schools and Colleges.*

(a) (No change.)

(b) A career school or college may submit an application for a certificate of authority to grant degrees to the Board if it:

(1) has been legally operating, enrolling students, and conducting classes in Texas and has complied with state law as a non degree-granting institution for a minimum of two (2) years; or

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

(c) Application for a Certificate of Authority.

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

(3) Submission of the application for a certificate of authority, which shall include the following documentation:

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

(G) evidence of approval from the Texas Workforce Commission. The Board will not approve an application for a Certificate of Authority unless the Texas Workforce Commission has approved the institution to offer a course of instruction or has been issued an exemption.

(H) (No change.)

(4) - (5) (No change.)

(d) - (r) (No change.)

(s) Associate of Occupational Studies (AOS) Degree. Texas has three career schools or colleges awarding the AOS degree: Universal Technical Institute, Southwest Institute of Technology, and Western Technical College [~~Institute~~]. The AOS degree shall be awarded in only the following fields: automotive mechanics, diesel mechanics, refrigeration, electronics, and business. Each of the three Institutions may continue to award the AOS degree for those fields listed above and shall be restricted to those fields.

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

(t) (No change.)

§7.15. *Data Reporting.*

The institutions shall provide to the Board annually, in a form established by the Board, student records of the type specified in §7.5[~~(a)~~] (19) of this chapter (relating to Standards for Operation of Institutions).

§7.17. *Prohibitions, Administrative Penalties, and Injunctions.*

(a) - (t) (No change.)

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

Filed with the Office of the Secretary of State on October 20, 2008.

TRD-200805530

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: January 29, 2009

For further information, please call: (512) 427-6114



CHAPTER 21. STUDENT SERVICES

SUBCHAPTER NN. EXEMPTION PROGRAM FOR VETERANS AND THEIR DEPENDENTS (THE HAZLEWOOD ACT)

19 TAC §§21.2100, 21.2101, 21.2103, 21.2106 - 21.2108

The Texas Higher Education Coordinating Board proposes amendments to §§21.2100, 21.2101, 21.2103, 21.2106, 21.2107, and 21.2108 concerning the Exemption Program for Veterans and Their Dependents (The Hazlewood Act). Specifically, §§21.2100(7) - (19) are renumbered due to the deletion of §21.2100(6) and §21.2100(10). The deletion of §21.2100(6) and §21.2100(10) would eliminate the definitions of "Commissioner" and "Federal Survivor Benefits," respectively, as these terms no longer appear in the text of this rule. The amendment to renumbered §21.2100(7) removes the reference to the qualifications for a dependent child, as the term "dependent" only applies to children who are not biological or adopted. The amendment to renumbered §21.2100(12) expands the definition of "identification number" to include a school-assigned identification number for eligible veterans who are non-U.S. citizens. The amendment to §21.2101(a) clarifies the types of fees for which the exemption cannot be used. The amendment to §21.2101(b) specifies that Hazlewood benefits can be combined with federal education benefits based on their combined value for the entire semester. The amendment to §21.2103(1) deletes "dependent" from the description of children as, by definition in these rules, "children" does not require a person to have been a dependent if he or she was a biological or adopted child at the time the parent died or became disabled. The amendment to §21.2106 updates the section title from "Applications" to "Awards," which is a better representation of the section's content. In §21.2106(a)(1), the proposed amendment clarifies that only Hazlewood hours used since Fall 1995 count against a student's 150 hours of eligibility. The proposed amendment to §21.2107 deletes two words that are duplicated. The amendment to §21.2108(a)(2) deletes the reference to "social security number," as a school-assigned identification number is now acceptable.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance/Chief Operating Officer, has determined that for each year of the first five years the section is in effect, there will no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the section will be an easier understanding of program requirements. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@theeb.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, §54.203 which provides the Coordinating Board with the authority to adopt rules to provide for the efficient and uniform application of this section.

The amendments affect Texas Education Code, §54.203.

§21.2100. *Definitions.*

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

(1) - (5) (No change.)

~~[(6) Commissioner--The Commissioner of Higher Education.]~~

~~(6) [(7)] Contact hours--A unit of measure that represents an hour of scheduled instruction given to students of which 50 minutes must be of direct instruction. Also referred to as clock hours.~~

~~(7) [(8)] Dependent--An individual who was claimed as a dependent for federal income tax purposes by the individual's parent or court-appointed legal guardian in a particular year and in the previous tax year. A veteran was a dependent if he or she was claimed as such by a parent or legal guardian during the veteran's year of entry into the service and in the previous tax year. [A child was a dependent if he or she was claimed as a dependent for tax purposes the year of the veteran's death or disabling injury].~~

~~(8) [(9)] Extraordinary costs--(for community/junior colleges only) tuition and fee costs that exceed the average tuition and fee charges at the institution.~~

~~[(10) Federal survivor benefits--Benefits offered the surviving children of deceased veterans through Title 38, United States Code, Chapter 35.]~~

~~(9) [(11)] Hazlewood Act Exemption--The tuition and partial fee exemption authorized under Texas Education Code, §54.203.~~

~~(10) [(12)] Honorably discharged--Released from active duty military service with an Honorable Discharge, General Discharge under Honorable Conditions, or Honorable Separation or Release from Active Duty, as documented by the Certificate of Release or Discharge from Active Duty (DD214) issued by the Department of Defense.~~

~~(11) [(13)] Identification number--An individual's social security number or school-assigned identification number.~~

~~(12) [(14)] Institution--A Texas public institution of higher education as defined in Texas Education Code, §61.003(8).~~

~~(13) [(15)] Deposit fees--Fees that an institution may collect under Texas Education Code, §54.502.~~

~~(14) [(16)] Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B, of this title (relating to Determination of Resident Status and Waiver Programs for Certain Nonresident Persons).~~

~~(15) [(17)] Student service fees--Fees that an institution may, under Texas Education Code, §§54.503, 54.5061 and 54.513, elect to charge to students to cover the cost of student services.~~

~~(16) [(18)] Training--Time spent as a member of the armed forces that is not included in the "Net Active Service" or the sum of "Net~~

Active Service" indicated on the Certificate of Release or Discharge from Active Duty (DD214).

~~(17) [(19)] Tuition--All types of tuition that an institution may, under Texas Education Code, Chapter 54, collect from students attending the institution, including statutory tuition, discretionary tuition, designated tuition, and board-authorized tuition.~~

§21.2101. *Hazlewood Act Exemption.*

(a) Subject to the following provisions, an institution shall exempt an eligible veteran or child from the payment of tuition and fees, other than deposit and student service fees. The exemption shall not apply to the payment of fees for services or items that are not required for enrollment in general or for items that are not required for the specific courses taken by the student.

(b) If the eligible veteran or child is entitled to federal veterans' education benefits during the term or semester for which he or she applies for the Hazlewood Act Exemption, he or she is entitled to receive both federal and state veterans benefits during the same time only if the value of the federal veteran's benefits for the term or semester is less than the value of the student's tuition and fees, less deposit and student service fees.

(c) - (h) (No change.)

§21.2103. *Eligible Children.*

In order to be eligible to receive a Hazlewood Act Exemption, children shall demonstrate that they:

(1) are ~~[dependent]~~ children of:

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

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

§21.2106. *Subsequent Hazlewood Exemption Awards [Applications].*

(a) For each term or semester of an academic year in which the veteran or child receives a Hazlewood Act Exemption, the institution shall confirm that the veteran or child:

(1) has not exhausted his or her 150 credit hours of eligibility through the program since Fall 1995,

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

(b) (No change.)

§21.2107. *Release of Data to the Board and Institutions.*

Prior to the census date of the first term or semester of an academic year in which the veteran or child receives a Hazlewood Act Exemption, he or she shall execute a statement, consenting to the release of the number of hours taken in the current academic year and in all previous academic years to the Board ~~[and to]~~ and to any institution that the veteran may attend.

§21.2108. *Reporting.*

(a) All institutions shall report by means of the Texas Higher Education Coordinating Board's CBM 001 report, for each eligible veteran and child who is exempted from the payment of tuition and mandatory and discretionary fees, other than deposit and student service fees, the following information to the Board:

(1) (No change.)

(2) the person's identification number ~~[(social security number)],~~

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

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

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

Filed with the Office of the Secretary of State on October 20, 2008.

TRD-200805531

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: January 29, 2009

For further information, please call: (512) 427-6114



CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER L. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT PROGRAM

19 TAC §22.228

The Texas Higher Education Coordinating Board proposes amendments to §22.228 concerning the Toward Excellence, Access, and Success (TEXAS) Grant Program. Specifically, the amendment to subsection (b)(3) corrects the citation relating to Hardship Provisions. The amendment to subsection (b)(7) corrects the citation relating to Satisfactory Academic Progress. Subsection (c) (Discontinuation of Eligibility or Non-Eligibility) is proposed for deletion in its entirety, as these procedures are addressed in §22.230.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance/Chief Operating Officer, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be an easier understanding of program requirements. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thehb.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, §56.303, which provides the Coordinating Board with the authority to adopt any rules necessary to implement the TEXAS Grant program.

The amendments affect Texas Education Code, §§56.301 - 56.311.

§22.228. *Eligible Students.*

(a) (No change.)

(b) To receive a continuation award through the TEXAS Grant Program, a student must:

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

(3) be enrolled at least three-quarter time unless granted a hardship waiver of this requirement under §22.231 [~~§21.231~~] of this title (relating to Hardship Provisions);

(4) - (6) (No change.)

(7) make satisfactory academic progress towards an undergraduate degree or certificate, as defined in §22.229 [~~§21.229~~] of this title (relating to Satisfactory Academic Progress).

(8) (No change.)

~~[(e) Discontinuation of Eligibility or Non-Eligibility.]~~

~~[(1) Unless granted a hardship postponement in accordance with §22.229(e) of this title (relating to Hardship Provisions), a student's eligibility for a TEXAS Grant ends six years from the start of the semester or term in which the student received his or her first disbursement of an initial TEXAS Grant award, if the student's eligibility for a TEXAS Grant was based on the completion of the Recommended or Advanced High School Program or its equivalent in high school.]~~

~~[(2) Unless granted a hardship postponement in accordance with §22.229(e) of this title, a student's eligibility ends four years from the date of the semester or term in which the student received his or her first disbursement of an initial TEXAS Grant award if the student's eligibility was based on receiving an associate's degree.]~~

~~[(3) A student's eligibility ends one year from the date of the semester or term in which the student received his or her first disbursement of an initial TEXAS Grant award, if the student's eligibility was based on the expectation that the student would complete the Recommended or Advanced High School Program, but the student failed to do so. However, if such a student later receives an associate's degree and again qualifies for TEXAS Grants, he or she can receive an additional four years of eligibility.]~~

~~[(4) A student who is eligible for a TEXAS Grant based on completion of the Recommended or Advanced High School Program or its equivalent in high school may receive a TEXAS Grant for no more than 150 semester credit hours or the equivalent.]~~

~~[(5) A student who is eligible for a TEXAS Grant based on receiving an associate's degree may receive a TEXAS Grant for no more than 90 semester credit hours.]~~

~~[(6) A person is not eligible to receive an initial or continuation TEXAS Grant if the person has been convicted of a felony or an offense under Chapter 481, Health and Safety Code (Texas Controlled Substances Act), or under the law of any other jurisdiction involving a controlled substance as defined by Chapter 481, Health and Safety Code, unless the person has met the other applicable eligibility requirements under this subchapter and has:]~~

~~[(A) received a certificate of discharge by the Texas Department of Criminal Justice or a correctional facility or completed a period of probation ordered by a court, and at least two years have elapsed from the date of the receipt or completion; or]~~

~~[(B) been pardoned, had the record of the offense expunged from the person's record, or otherwise been released from the resulting ineligibility to receive a TEXAS Grant.]~~

~~[(7) Other than as described in §22.229 of this title, if a person fails to meet any of the requirements for receiving a continuation award as outlined in subsection (b) of this section after completion of any year, the person may not receive a TEXAS Grant until he or she~~

completes courses while not receiving a TEXAS Grant and meets all the requirements of subsection (b) of this section as of the end of that period of enrollment.]

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

Filed with the Office of the Secretary of State on October 20, 2008.

TRD-200805532

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: January 29, 2009

For further information, please call: (512) 427-6114



PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING EARLY CHILDHOOD EDUCATION PROGRAMS

19 TAC §102.1002

The Texas Education Agency (TEA) proposes new §102.1002, concerning the Prekindergarten Early Start Grant Program. The proposed new rule would implement the Texas Education Code (TEC), §29.155, that authorizes the commissioner of education to establish procedures and adopt rules for the administration of grant awards for kindergarten and prekindergarten programs.

The 76th Texas Legislature established a grant program that provides funding to districts interested in implementing or expanding their prekindergarten program. The TEA has administered prekindergarten grant awards in accordance with the TEC, Chapter 29, Subchapter E, since 1999. The TEC, §29.155, authorizes the commissioner to adopt rules to administer kindergarten and prekindergarten grants. The TEC, §29.1533, requires a school district, before establishing a new prekindergarten program, to consider the possibility of sharing use of an existing Head Start or other child care program site as a prekindergarten site.

Proposed new 19 TAC §102.1002 would implement the TEC, §29.155, by establishing in rule new procedural and reporting requirements for prekindergarten grants to school districts, open-enrollment charter schools, and education service centers operating as fiscal agents of shared services arrangements. The proposed new rule would include provisions to define applicable words and terms; set forth requirements for eligibility, application, and notification; establish details relating to funding, including required percentage distributions, allowable and unallowable expenditures, and subsequent funding; provide conditions of operation; and address exemptions, technical assistance, evaluation, revocation, and recovery of funds. The proposal would also stipulate that the funding structure would be implemented beginning with the 2009-2010 school year.

The proposed new rule would provide guidelines and procedures for school districts and open-enrollment charter schools to follow in order to apply for the Prekindergarten Early Start Grant

Program. Grantees must agree to submit all information, application materials, and reports required by the agency.

Applicants for the Prekindergarten Early Start Grant Program would be required to provide details relating to grant eligibility as part of the Request for Application, in accordance with the TEC, §29.155, including needs-assessment data for eligible prekindergarten children in the service delivery area projected to be served with grant funds. In addition, applicants would be required to provide evidence of local partnership agreements for delivery of a mixed-service model among the applicant, Head Start program, and child care program providers.

Grantees under the Prekindergarten Early Start Grant Program would be required to provide the TEA annual evaluations concerning student performance and program impact as a result of grant activities, as well as continuation eligibility data based on accomplished goals and objectives each year of the grant cycle.

Local school districts and open-enrollment charter schools would be required to maintain documentation of the following: (1) a community-wide needs assessment of eligible prekindergarten children in Head Start and subsidized child care programs; (2) a description of the structure of the early childhood instructional component including student screening and assessment process and the number of instructional hours provided by certified teaching personnel; (3) a description of the partners or collaborators that have entered into a collaborative agreement to develop and carry out a school readiness integration plan; (4) a district plan for sustainability after grant funds cease; and (5) a description of the evaluation plan or design for monitoring the implementation of the program on an ongoing basis and for determining whether the program met its stated goals and objectives and achieved the desired results based on established performance indicators.

Gina Day, deputy associate commissioner for school readiness and partnerships, has determined that for the first five-year period the new rule is in effect there will be no additional fiscal implications for state government as a result of enforcing or administering the new section. There will be fiscal implications for local government. Increases or losses in revenue to school districts and open-enrollment charter schools would be affected by changes to the funding structure, and the impacts are unknown. Funds under the former grant program known as the Prekindergarten Expansion Grant Program have been distributed by the commissioner on a continuation grant basis to be used by schools for the purpose of providing grants for prekindergarten programs consistent with the provisions of the TEC, §29.155. Since 1999, funding allocations under the Prekindergarten Expansion Grant Program have been made only to local educational agencies that received grant funding in the previous year and have been based on the number of prekindergarten students, days of instruction, and percentage of attendance. Under the Prekindergarten Expansion Grant Program, Cycle 13, school year 2007-2008, 287 school districts and open-enrollment charter schools were awarded \$84,726,160 in grant funds. During Cycle 14, school year 2008-2009, the same school districts and open-enrollment charter schools will be awarded \$85,294,627.

Prekindergarten Expansion Grant Program grantees were required to apply for the same number of students as in the previous year and were permitted to apply for less funding than in the previous year; however, they were not permitted to apply for additional funding. In addition, grantees who received funds under the previous Prekindergarten Expansion Grant Program

were required to enter into partnership--a coordination of services agreement--with local Head Start and licensed child care programs and submit a School Readiness Integration Plan that was effective during the funding period.

The proposed new 19 TAC §102.1002 would create a funding structure for three categories of applicants. Percentages of funding, as determined annually, would be awarded proportionately using Tier 1-3 categories. Funding would be provided for a period not to exceed five years, based on annual accomplishment of grant objectives and requirements set forth in the application.

The proposed new rule would allow the commissioner to make grants to school districts and open-enrollment charter schools from funds appropriated for the program beginning with the 2009-2010 school year (fiscal year 2010). For fiscal year 2010, the grant would require sharing use of an existing Head Start or child care program site as a prekindergarten site.

Funding for future years is contingent on appropriations made by the state legislature for this purpose. The proposed new rule for the Prekindergarten Early Start Grant Program has the potential to impact current grantees that have been receiving funding since legislative establishment of the Prekindergarten Expansion Grant Program in 1999. Under the new proposed rule, a percentage of this revenue source would be available through a competitive application process to a new group of grantees that have not participated in the program previously.

Ms. Day has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section would be the implementation of school readiness integration, a prekindergarten service delivery model that requires administrative and instructional collaboration between public school prekindergarten, licensed child care, and Head Start programs. Grant funds would allow districts to provide quality preschool services based on scientific research and student performance. Students would benefit by being prepared to enter kindergarten on or above grade level. The public would realize the benefit of increasingly improved school readiness programs for prekindergarten eligible children through individual student success and a more highly educated and prepared workforce. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins October 31, 2008, and ends December 1, 2008. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register* on October 31, 2008.

The new rule is proposed under the TEC, §29.155, which authorizes the commissioner to adopt rules to administer kindergarten and prekindergarten grants.

The proposed new rule implements the TEC, §§29.1533, 29.155, 29.158, and 29.161.

§102.1002. Prekindergarten Early Start Grant Program.

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

(1) Eligible student--A child is eligible for enrollment in a prekindergarten class under this section if the child is at least three years of age and meets eligibility criteria consistent with the Texas Education Code (TEC), §29.153.

(2) Licensed child care--Child care that meets the requirements adopted by the Texas Department of Family and Protective Services under the Human Resources Code, §42.002(3).

(3) Nonprofit--An organization that meets the requirements of the United States Code, Title 26, Subtitle A, Chapter 1, Subchapter F, Part I, Section 501(a).

(4) Partner--A non-public school organization collaborating with a public school to provide an educational component to eligible prekindergarten children.

(5) Prekindergarten Early Start Grant Program--A program established in accordance with the TEC, §29.155, to administer grant funds to implement and expand prekindergarten programs. This grant program was formerly known as the Prekindergarten Expansion Grant Program.

(6) Prekindergarten site--A public or non-public school classroom where teachers work with three- and four-year-old children in a prekindergarten school readiness program.

(7) Proven school readiness components--The components of proven school readiness are:

(A) a high-quality, developmentally appropriate, and rigorous curriculum;

(B) continuous monitoring of student progress in the classroom; and

(C) professional development, including mentoring, to promote student achievement.

(8) School district--For the purposes of this section, the definition of a school district includes an open-enrollment charter school.

(9) School readiness certification system--In accordance with the TEC, §29.161, the school readiness certification system is a valid, research-based automated system provided by the State Center for Early Childhood Development through which an early childhood education program submits an application demonstrating the program's record of cognitive, social, and emotional development of young children to be certified as a school ready program.

(10) School readiness integration--In accordance with the TEC, §29.158, school readiness integration refers to cooperative strategies to share resources across public and non-public program delivery organizations in a community or communities that may include, but are not limited to:

(A) sharing certified or highly qualified teachers so that every child in each targeted classroom receives a minimum of three hours of high-quality skill development consistent with developing children's social and emotional well-being;

(B) developing a comprehensive instructional framework, based on the Texas Prekindergarten Guidelines, consisting of common performance goals that encompass the unique characteristics of each individual organization responsible for preparing young children for school success;

(C) sharing physical space if one organization lacks capacity while another has available capacity;

(D) conducting joint professional development programs that focus on proven school readiness components, including the Texas Prekindergarten Guidelines; and

(E) adopting similar approaches to student progress monitoring to inform classroom instruction.

(11) School readiness integration partnership--A collaboration among public prekindergarten programs and local workforce development boards, Head Start providers, college or university early childhood programs, and/or providers of private for-profit or nonprofit licensed child care services that provides a school readiness component to eligible prekindergarten students.

(12) School ready or school readiness--A term that refers to a child being able to function competently in a school environment in the areas of early language and literacy, mathematics, and social skills as objectively measured by state-approved assessment instruments.

(13) Shared services arrangement (SSA)--An agreement between two or more school districts and/or education service centers (ESCs) that provides services for entities involved.

(14) State Center for Early Childhood Development (SCECD)--The state center for early childhood education research and training for early childhood teachers and caregivers administered by The University of Texas Health Science Center at Houston.

(15) Texas Prekindergarten Guidelines--Guidelines approved by the commissioner of education that offer detailed descriptions of expected behaviors across multiple skill domains that should be observed in four- to five-year-old children by the end of their prekindergarten experience. The guidelines are to prepare prekindergarten children to master the skills and concepts in each subject area specified in §74.1 of this title (relating to Essential Knowledge and Skills) in the kindergarten Texas Essential Knowledge and Skills.

(16) Tier 1 grantee--An applicant whose Grade 3 student performance on the assessment instruments administered under the TEC, §39.023, has been substantially below the state average, as defined in the grant application, for the last three consecutive years that:

(A) has not previously received Prekindergarten Expansion Grant funding; or

(B) has previously received Prekindergarten Expansion Grant funding but did not participate in Cycle 14 (school year 2008-2009).

(17) Tier 2 grantee--An applicant that participated in Cycle 14 of the Prekindergarten Expansion Grant Program (school year 2008-2009) that is eligible to receive continuation funding on the basis of the school district's:

(A) demonstrated improved student performance results for the last three consecutive years on the Grade 3 assessment instruments administered under the TEC, §39.023; and

(B) demonstrated successful implementation of a prekindergarten program that includes proven school readiness components.

(18) Tier 3 grantee--An applicant that participated in Cycle 14 of the Prekindergarten Expansion Grant Program (school year 2008-2009) that is eligible to receive continuation funding on the basis of the school district's Grade 3 student performance on the assessment instruments administered under the TEC, §39.023, that has been sub-

stantially below the state average, as defined in the grant application, for the last three consecutive years.

(b) Eligibility. Eligible applicants include school districts, open-enrollment charter schools, and ESCs operating as the fiscal agent of an SSA. An applicant may apply for Prekindergarten Early Start Grant Program funds if the applicant:

(1) establishes a school readiness integration partnership; and

(2) demonstrates how the applicant will measure student progress based on proven school readiness components and the school readiness certification system in accordance with TEC, §29.161.

(c) Application and grant award.

(1) An eligible applicant must submit a Prekindergarten Early Start Grant Program application in accordance with the instructions provided by the Texas Education Agency (TEA).

(2) An applicant must document in the grant application its locally adopted procedures for:

(A) determining which eligible students will participate in the program;

(B) implementing a strategic plan encouraging eligible students to attend the program; and

(C) sustaining the level of program quality and services following the term of the grant period.

(3) Each applicant shall provide evidence that before establishing a new prekindergarten program, the school district considered the possibility of sharing use of an existing Head Start or other licensed child care prekindergarten site as a prekindergarten site.

(d) Notification. The TEA will notify each applicant in writing of its selection or non-selection for funding. In the case of an application selected for funding, notification to the grantee will include the contractual conditions which the grantee must accept in accordance with state law.

(e) Funding. Contingent upon adequate appropriations, distribution of funds will be according to the following funding structure.

(1) Tier 1 funding. The highest percentage of available funding, as determined annually in the grant application, will be proportionately awarded to Tier 1 grantees. Funding will be provided for a period not to exceed five years from year one of grant application approval and will be based on annual accomplishment of grant objectives and requirements set forth in the application in subsequent years of the five-year cycle.

(2) Tier 2 funding. A percentage of available funding, as determined annually in the grant application, will be awarded to Tier 2 grantees. Funding will be provided for a period not to exceed three years from year one of grant application approval and will be based on annual accomplishment of grant objectives and requirements set forth in the application in subsequent years of the three-year cycle.

(3) Tier 3 funding. A percentage of available funding, as determined annually in the grant application, will be awarded to Tier 3 grantees. Funding will be provided for a period not to exceed two years. Tier 3 grantees will apply annually and shall be required to participate in intensive technical assistance provided by the SCECD focused on proven school readiness components aligned with the Texas Prekindergarten Guidelines.

(f) Allowable expenditures. Allowable expenditures include, but are not limited to, the following:

(1) expenditures related to the continuation of existing full-day prekindergarten programs;

(2) personnel costs related to the teaching personnel needed to expand prekindergarten programs to meet the requirements of at least six hours of instruction by a certified teacher each day;

(3) curriculum materials based on scientific research that are consistent with the Texas Prekindergarten Guidelines and designed to improve the school readiness of preschool children;

(4) equipment, including computers and other technology;

(5) leases for space for prekindergarten programs;

(6) costs associated with developing plans for and entering into integrated school readiness partnerships, including costs associated with infrastructure and administration of the program and partnership;

(7) training activities on proven school readiness components conducted by the SCECD or another provider;

(8) costs associated with the grantee's participation in the school readiness certification system; and

(9) indirect costs.

(g) Unallowable expenditures. Grant funds may not be expended on the following:

(1) portable buildings;

(2) construction of classroom space;

(3) renovation or remodeling of existing space; or

(4) expenditures related to students who are not eligible for the program.

(h) Conditions of operation.

(1) Each grantee must agree to submit all information requested by the TEA through periodic activity/progress reports, a final evaluation report, and other activities related to the evaluation of the program. Reports must be submitted in the prescribed time and must contain all requested information in the prescribed format. These reports will be used by the TEA to evaluate the implementation and progress of grant-funded programs and to determine if modifications or adjustments to the program are necessary.

(2) Each grantee must provide a prekindergarten program designed to develop children's school readiness that is aligned with the Texas Prekindergarten Guidelines.

(3) Each grantee must collaborate in a school readiness integration partnership as established in its grant application. In coordinating school readiness services under this section and in making any related decision to contract with partners such as local workforce development boards, Head Start and Early Head Start providers, licensed child care providers, or other licensed private for-profit or nonprofit child care services providers, a school district shall give preference to entities willing to commit through mutual agreement to implement proven school readiness components that are aligned with the Texas Prekindergarten Guidelines, including participation in:

(A) the school readiness certification system in accordance with the TEC, §29.161;

(B) a nationally recognized accrediting organization approved by the Texas Workforce Commission and the Texas Department of Family and Protective Services; or

(C) the Texas Rising Star Provider certification program administered by the Texas Workforce Commission.

(4) Each grantee must develop and implement, throughout the duration of the grant period, a sustainability plan to continue the quality and level of services of the program after the grant period ends. The sustainability plan must include continuation of the school readiness integration plan and participation in the school readiness certification system.

(i) Subsequent funding. All subsequent funding will be awarded according to the tier funding structure described in subsection (e) of this section. To receive subsequent funding for the Prekindergarten Early Start Grant Program, all grantees must reapply for funding each year of the grant cycle and meet all applicable performance standards included in the prior year's grant agreement. In addition, the following provisions apply.

(1) A Tier 2 grantee applying for funding in years two and three must present valid, research-based empirical data as evidence that the grantee has implemented a prekindergarten program that includes proven school readiness components. After three years of not receiving funds subsequent to the end of the last year of the three-year grant cycle, a Tier 2 grantee will be eligible to reapply for funding as a Tier 1 applicant if the school district's Grade 3 performance on the assessment instruments administered under the TEC, §39.023, is substantially below the state average, as defined in the grant application.

(2) A Tier 3 grantee will be eligible to reapply for funding as a Tier 2 grantee after the initial two-year cycle if the grantee's Grade 3 student performance level demonstrates improvement, based on valid and reliable measurement by the school readiness certification system, by the end of the grant period.

(j) Exemptions.

(1) The requirement in subsection (h)(3) of this section for a school readiness integration partnership may be exempted if Head Start and/or licensed child care programs required for school readiness integration planning are unavailable in a local community. A school district must provide proof of inability to enter into a school readiness integration partnership by submitting an Exemption Request form in the grant application signed by the superintendent or his/her designee, including a statement signed by the authorized member of the school district's board of trustees certifying inability to submit the required school readiness integration plan based upon unavailability of eligible entities and programs with which to coordinate. An open-enrollment charter school board may also provide a statement certifying inability to enter into a school readiness integration plan based on limitations of the approved charter.

(2) All requests for exemptions from program requirements must be submitted as part of the application.

(3) A grantee that does not administer the Texas Primary Reading Inventory (TPRI) or Tejas LEE by the effective date of this section may request an exemption from the requirement in subsection (b)(2) of this section to participate in the school readiness certification system. The grantee, however, will be required to establish a policy for providing another source of valid and reliable data to demonstrate program effectiveness.

(k) Technical assistance. The TEA or its contractors will provide technical assistance, contingent on available funding, to implement proven school readiness components to selected school districts and their school readiness integration partners. Based on a comprehensive analysis of student performance, periodic activity/progress reports, final evaluation reports, and other relevant data from grantees, selected

grantees and their school readiness integration partners will be required to participate in the technical assistance.

(l) Evaluation. Each grantee operating a prekindergarten program using Prekindergarten Early Start Grant Program funds must comply with evaluation procedures consistent with the TEC, §29.154, in a manner established by the commissioner. Annual submission of evaluation reports based on program quality and student performance will be required in the manner and time set forth in the application for funding.

(m) Revocation.

(1) The commissioner may revoke a grant award for the Prekindergarten Early Start Grant Program based on the following factors:

(A) noncompliance with application assurances and/or the provisions of this section;

(B) lack of program success as evidenced by progress reports and program data;

(C) failure to participate in data collection and audits;

(D) failure to meet performance standards specified in the application; or

(E) failure to provide accurate, timely, and complete information as required by the TEA to evaluate the effectiveness of the Prekindergarten Early Start Grant Program.

(2) A decision by the commissioner to revoke the grant award of a Prekindergarten Early Start Grant Program is final and may not be appealed.

(n) Recovery of funds. The commissioner may audit the use of grant funds and may recover funds against any state provided funds.

(o) Implementation. The funding structure delineated in subsection (e) of this section takes effect beginning with school year 2009-2010.

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

Filed with the Office of the Secretary of State on October 20, 2008.

TRD-200805536

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: November 30, 2008

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 163. LICENSURE

22 TAC §163.5

The Texas Medical Board proposes amendments to §163.5, concerning Licensure Documentation.

The amendment to §163.5 adds additional credentialing organizations that are recognized for the purpose of an international

medical school graduate to prove that the medical school was substantially equivalent to a Texas medical school at the time of attendance.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the section is in effect there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed.

Mr. Simpson also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to make licensing of international medical school graduates more efficient by recognizing additional credentialing organizations.

There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§163.5. Licensure Documentation.

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

(c) Applicants for licensure who are graduates of medical schools outside the United States or Canada must furnish all appropriate documentation listed in this subsection, as well as that listed in subsections (a) and (b) of this section.

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

(5) "Substantially equivalent" documentation. An applicant who is a graduate of a medical school that is located outside the United States and Canada must present satisfactory proof to the board that each medical school attended was substantially equivalent to a Texas medical school at the time of attendance as defined under §163.1(12) of this title. This may include but is not limited to:

(A) a Foreign Educational Credentials Evaluation from the Office of International Education Services of the American Association of Collegiate Registrars and Admissions Officers (AACRAO) or an International Credential Evaluation from the Foreign Credential Service of America (FCSA), or another similar entity as approved by the board;

(B) - (I) (No change.)

(6) (No change.)

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

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

Filed with the Office of the Secretary of State on October 17, 2008.

TRD-200805468

Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Earliest possible date of adoption: November 30, 2008
For further information, please call: (512) 305-7016

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CHAPTER 166. PHYSICIAN REGISTRATION

22 TAC §166.2, §166.6

The Texas Medical Board proposes amendments to §166.2, concerning Continuing Medical Education and §166.6, concerning Exemption from Registration Fee for Retired Physician Providing Voluntary Charity Care.

The amendments to §166.2 and §166.6 update the word "hours" to "credits" to comport with modern language usage.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed.

Mr. Simpson 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 to bring the Board's rules up to date by using more modern language for Continuing Medical Education.

There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§166.2. Continuing Medical Education.

(a) As a prerequisite to the registration of a physician's permit a physician must complete 48 credits [~~hours~~] of continuing medical education (CME) every 24 months. CME credits [~~hours~~] must be completed in the following categories:

(1) At least 24 credits [~~hours~~] every 24 months are to be from formal courses that are:

(A) - (E) (No change.)

(2) At least two of the 24 formal credits [~~hours~~] of CME which are required by paragraph (1) of this subsection must involve the study of medical ethics and/or professional responsibility. Whether a particular credit [~~hour~~] of CME involves the study of medical ethics and/or professional responsibility shall be determined by the organizations which are enumerated in paragraph (1) of this subsection as part of their course planning.

(3) The remaining 24 credits [~~hours~~] for the 24-month period may be composed of informal self-study, attendance at hospital lectures or grand rounds not approved for formal CME, or case confer-

ences and shall be recorded in a manner that can be easily transmitted to the board upon request.

(4) A physician whose practice includes treating patients in an emergency room setting may complete two credits [~~hours~~] of formal continuing medical education, as required by paragraph (1) of this subsection, relating to forensic evidence. To obtain credit for such courses, a course must include information regarding indicators of sexual assault and interviewing a person who may have been the victim of a sexual assault.

(b) A physician must report on the registration permit application if she or he has completed the required CME during the previous 2 years.

(1) A licensee may carry forward CME credits [~~credit hours~~] earned prior to a registration report which are in excess of the 48-credit [~~48-hour~~] biennial requirement and such excess credits [~~hours~~] may be applied to the following years' requirements.

(2) A maximum of 48 total excess credits [~~credit hours~~] may be carried forward and shall be reported according to the categories set out in subsection (a) of this section.

(3) Excess CME credits [~~credit hours~~] of any type may not be carried forward or applied to a report of CME more than two years beyond the date of the registration following the period during which the credits [~~hours~~] were earned.

(c) A licensee shall be presumed to have complied with this section if in the preceding 36 months the licensee becomes board certified or recertified by a specialty board approved by the American Board of Medical Specialties or the American Osteopathic Association Bureau of Osteopathic Specialists. This provision exempts the physician from all CME requirements, including the requirement for one credit [~~hour~~] involving the study of medical ethics and/or professional responsibility, as outlined in subsection (a)(2) of this section. This exemption is valid for one registration period only.

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

(h) This section does not prevent the board from taking board action with respect to a licensee or an applicant for a license by requiring additional credits [~~hours~~] of CME or of specific course subjects.

(i) (No change.)

(j) Physicians in residency/fellowship training or who have completed such training within six months prior to the registration expiration date, will satisfy the requirements of subsection [~~subsections~~] (a)(1) and (2) of this section by their residency or fellowship program.

(k) Unless exempted under the terms of this section, a licensee's apparent failure to obtain and timely report the completion of the required number of credits [~~hours~~] of CME on his or her registration application as provided for in this section may result in the denial of the registration permit until such time as the physician obtains and reports the required CME credits [~~hours~~]. The executive director of the board may issue to the licensee a temporary CME license numbered so as to correspond to the nonrenewed license. Such a temporary CME license shall be issued upon receipt of a written request and fee for the license made prior to the expiration of the 30-day grace period for registration at the direction of the executive director for a period of no longer than 60 days. A temporary CME license issued pursuant to this subsection may be issued to allow the physician who has not obtained or timely reported the required number of credits [~~hours~~] an opportunity to correct any deficiency so as not to require termination of ongoing patient care.

(l) (No change.)

(m) CME credits [hours] which are obtained during the 30 day grace period after the expiration of the licensee's permit or while under a CME temporary license to comply with the CME requirements for the preceding two years as a prerequisite for obtaining a registration permit, shall first be credited to meet the CME requirements for the previous registration period and then any additional credits [hours] obtained shall be credited to meet the CME requirements for the current registration period.

(n) A false report or false statement to the board by a licensee regarding CME credits [hours] reportedly obtained shall be a basis for disciplinary action by the board pursuant to the Medical Practice Act (the "Act"), Tex. Occ. Code Ann. §§164.051 - 164.053. A licensee who is disciplined by the board for such a violation may be subject to the full range of actions authorized by the Act including suspension or revocation of the physician's medical license, but in no event shall such action be less than an administrative penalty of \$500.

(o) Administrative penalties for failure to timely obtain and report required CME credits [hours] may be assessed in accordance with §§187.75 - 187.82 of this title (relating to Imposition of Administrative Penalty) and §190.14 (relating to Disciplinary Sanction Guidelines).

(p) Unless exempted under the terms of this section, failure to obtain and timely report the CME credits [hours] on a registration permit application shall subject the licensee to a monetary penalty for late registration in the amount set forth in §175.2 of this title (relating to Penalties). Any temporary CME licensure fee and any administrative penalty imposed for failure to obtain and timely report the 48 credits [hours] of CME required for a registration permit application shall be in addition to the applicable penalties for late registration as set forth in §175.2 of this title [~~relating to Penalties~~].

§166.6. *Exemption From Registration Fee for Retired Physician Providing Voluntary Charity Care.*

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

(d) A physician who qualifies for and obtains an exemption from the registration fee authorized under this section shall obtain and report continuing medical education as required under the Act, §§156.051 - 156.055 and §166.2 of this title (relating to Continuing Medical Education), except that the number of credits [hours] of informal CME, as required by §166.2(a)(3) shall be reduced from 24 credits [hours] to 20 credits [hours].

(e) A retired physician who has obtained an exemption from the registration fee as provided for under this section, may be subject to disciplinary action under the Act, §§164.051 - 164.053 [~~053~~], based on unprofessional or dishonorable conduct likely to deceive, defraud, or injure the public if the physician engages in the compensated practice of medicine, the provision of medical services to members of the physician's family, or the self-prescribing of controlled substances or dangerous drugs.

(f) (No change.)

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

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Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016



CHAPTER 172. TEMPORARY AND LIMITED LICENSES

SUBCHAPTER B. TEMPORARY LICENSES

22 TAC §172.4

The Texas Medical Board proposes amendments to §172.4, concerning State Health Agency Temporary License.

The amendment to §172.4 updates the reference to the board rule requiring the holder of a temporary license under this section to show that the person has taken an examination within the last ten years.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the section is in effect there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed.

Mr. Simpson also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to update the reference to the Board rule requiring the holder of a temporary license under §172.4 to show that the person has taken an examination within the last ten years.

There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§172.4. *State Health Agency Temporary License.*

An applicant may elect to apply for a state health agency temporary license in lieu of licensure.

(1) The executive director of the board may issue such a temporary license to an applicant:

(A) who holds a valid license in another state or Canadian province on the basis of an examination, that is accepted by the board for licensure;

(B) who has passed the Texas medical jurisprudence examination;

(C) whose application has been filed, processed, and found to be in order. The application shall be complete in every detail with the exception of compliance with §163.1(a)(9)(K) of this title (relating to Definitions of Examinations accepted by the board for licensure); and

(D) who holds a salaried, administrative, or clinical position with an agency of the State of Texas.

(2) The state health agency temporary license shall be requested by the chief administrative officer of the employing state agency and shall be issued exclusively to that agency. The chief administrative officer shall state whether the temporary license is for a:

(A) clinical position. This temporary license will be valid for a one-year period from the date of issuance and will not be renewable. The temporary license is revocable at any time the board deems necessary. To practice beyond one year, the holder of the temporary license must fully comply with §163.7 [~~§163-1(a)(9)(K)~~] of this title (relating to Ten Year Rule [~~Definitions of Examinations accepted by the board for licensure~~]). During the period that the state health agency clinical temporary license is in effect, the physician will be supervised by a licensed staff physician who will regularly review the temporary license holder's skill and performance. This temporary license will be marked "clinical"; or

(B) administrative non-clinical position. This temporary license will be valid for a one-year period from the date of issuance; however, it is revocable at any time the board deems necessary. The temporary license shall automatically expire one year after the date of issuance but may be re-issued annually at the request of the chief administrative officer of the employing state agency and at the discretion of the Texas State Board of Medical Examiners. The holder of a state health agency temporary license, not designated as clinical, shall not practice medicine as that term is defined in the Medical Practice Act, TEX. OCCUPATIONS CODE ANN. §151.002(a)(13). This temporary license will be marked "administrative."

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

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CHAPTER 173. PHYSICIAN PROFILES

22 TAC §173.1

The Texas Medical Board proposes amendments to §173.1, concerning Profile Contents.

The amendment to §173.1 adds required information to the physician profile, including year of birth, name as the physician requests it to be published, and mailing address.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the section is in effect there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed.

Mr. Simpson also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to expand information that is publicly available to the public on physician

profiles, to include the year of birth for identification purposes, and the mailing address of the physician. The amendment will also give physicians flexibility to reflect their name.

There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§173.1. Profile Contents.

(a) The Texas Medical Board (the "board") shall develop and make available to the public a comprehensive profile of each licensed physician electronically via the Internet or in paper format upon request.

(b) The profile of each licensed physician shall contain the following information listed in paragraphs (1) - (27) [~~(25)~~] of this subsection:

(1) full name as the physician requests that it be published;

(2) place of birth if the physician requests that it be included in the physician's profile;

(3) year of birth;

(4) [~~(3)~~] gender;

(5) [~~(4)~~] ethnic origin if the physician requests that it be included in the physician's profile;

(6) [~~(5)~~] name of each medical school attended and the dates of:

(A) graduation; or

(B) Fifth Pathway designation and completion of the Fifth Pathway Program;

(7) [~~(6)~~] a description of all graduate medical education in the United States or Canada, including:

(A) beginning and ending dates;

(B) program name;

(C) city and state of program;

(D) type of training (internship, residency or fellowship); and

(E) specialty of program;

(8) [~~(7)~~] any specialty certification held by the physician and issued by a board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists;

(9) [~~(8)~~] primary and secondary specialties practiced, as designated by the physician;

(10) [~~(9)~~] the number of years the physician has actively practiced medicine in:

(A) the United States or Canada; and

(B) Texas;

(11) [(40)] the original date of issuance of the physician's Texas medical license;

(12) [(41)] the expiration date of the physician's registration permit;

(13) [(42)] the physician's current registration, disciplinary and licensure statuses;

(14) [(43)] the name and city of each hospital in Texas in which the physician has privileges;

(15) [(44)] the physician's primary practice location (street address, city, state and zip code);

(16) the physician's mailing address (street or P.O. Box address, city, state, and zip code);

(17) [(45)] the type of language translating services, including translating services for a person with impairment of hearing, that the physician provides at the physician's primary practice location;

(18) [(46)] whether the physician participates in the Medicaid program;

(19) [(47)] whether the physician's patient service areas are accessible to disabled persons, as defined by federal law;

(20) [(48)] a description of any conviction for an offense constituting a felony, a Class A or Class B misdemeanor, or a Class C misdemeanor involving moral turpitude;

(21) [(49)] a description of any charges reported to the board to which the physician has pleaded no contest, for which the physician is the subject of deferred adjudication or pretrial diversion, or in which sufficient facts of guilt were found and the matter was continued by a court of competent jurisdiction;

(22) [(20)] a description of any public board action against the physician;

(23) [(21)] a description of any disciplinary action against the physician by a medical licensing board of another state;

(24) [(22)] a description of the final resolution taken by the board on medical malpractice claims or complaints required to be opened by the board under the Medical Practice Act (the "Act"), Tex. Occ. Code Ann. §164.201;

(25) [(23)] a description of any formal complaint issued by the board's staff against the physician and initiated and filed with the State Office of Administrative Hearings under §164.005 of the Act and the status of the complaint;

(26) [(24)] a description of a maximum of five awards, honors, publications or academic appointments submitted by the physician, each no longer than 120 characters; and

(27) [(25)] a description of any medical malpractice claim against the physician, not including a description of any offers by the physician to settle the claim, for which the physician was found liable, a jury awarded monetary damages to the claimant, and the award has been determined to be final and not subject to further appeal.

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

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CHAPTER 185. PHYSICIAN ASSISTANTS

22 TAC §185.2

The Texas Medical Board proposes amendments to §185.2, concerning Definitions.

The amendment to §185.2 revises the definition of a supervising physician to define an "unrestricted medical license."

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the section is in effect there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed.

Mr. Simpson also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to clarify the meaning of the phrase "unrestricted medical license," as used in the Medical Practice Act.

There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§185.2. Definitions.

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

(1) - (16) (No change.)

(17) Supervising physician--A physician licensed by the medical board who has an active and unrestricted license and assumes responsibility and legal liability for the services rendered by the physician assistant, and who has notified the Medical Board of the intent to supervise a specific physician assistant and of the termination of such supervision.

(18) (No change.)

(19) Unrestricted medical license--a license held by a physician issued by the Medical Board that is not subject to an order with restrictions that would impair a physician's ability to supervise a PA inconsistent with the public's well being that could harm patients.

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

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CHAPTER 187. PROCEDURAL RULES
SUBCHAPTER B. INFORMAL BOARD
PROCEEDINGS

22 TAC §187.18

The Texas Medical Board proposes amendments to §187.18, concerning Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance.

The amendment to §187.18 revises procedures for requesting and granting a postponement of an ISC; recognizes right of a complainant to make a statement in an informal show compliance and settlement conference; and clarifies alternatives that an ISC Panel may consider, adding recommendation of imposition of administrative penalty.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously withdraws the proposed amendment to §187.18, which was previously proposed in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7961).

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the section is in effect there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed.

Mr. Simpson also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to clarify the rule to assure that a complainant is treated equally with any other witness at an ISC and to recognize the Board's new rule regarding the imposition of an administrative penalty.

There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§187.18. Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance.

(a) After referral of an investigation to the agency's legal division, the Hearings Coordinator of the board shall schedule an ISC before an ISC Panel, composed of two or more board representatives to be held after proper notice to the licensee. One board representative must be a public member. If the matter is before the Medical Board, at least one board representative must be a physician member.

(b) Requests to reschedule the ISC by a licensee must be in writing and shall be referred to the Hearings Counsel for consideration. To avoid undue disruption of the ISC schedule, the Hearings Counsel should grant a request only after conferring with the Hearings Coordinator and strictly applying ~~consideration of~~ the following guidelines:

(1) A request by a licensee to reschedule an ISC must be in writing and may be granted only if the licensee provides satisfactory evidence of the following requirements ~~[that is received by the agency]:~~

(A) A request received by the agency within five business days after the licensee received ~~[receives]~~ notice of the date of the ISC, must provide details showing that: ~~[should be granted if the request states]~~

(i) the licensee has a conflicting event that had been scheduled prior to receipt of notice of the ISC;

(ii) the licensee has made reasonable efforts to reschedule such event but a conflict ~~[a reasonable basis, the licensee has taken steps to meet the original schedule, and the licensee's conflict]~~ cannot reasonably be avoided.

(B) A request received by the agency more than five business days after the licensee received ~~[receives]~~ notice of the date of the ISC must provide details showing that ~~[and more than 30 days before the scheduled date for the ISC should be granted only if:]~~

[(i) a request by the licensee to reschedule the ISC has not previously been granted;]

[(ii) a reasonable basis is stated;]

[(iii) there would be hardship to the licensee if a request is not granted;]

[(iv) the nature of the allegations does not present a continuing threat to the public welfare; and]

[(v) rescheduling can be accommodated without significant disruption of the ISC schedule.]

[(C) within 30 days before the scheduled date for the ISC should not be granted unless paragraphs (2) or (3) of this subsection, apply.]

[(2)] [A request received by the agency at any time because of] an extraordinary event or circumstance has arisen since receipt of the notice that will prevent the licensee from attending the ISC. The ~~[should be granted, provided the]~~ request must show that the request is made ~~[is received by the agency]~~ within five business days ~~[a reasonable time]~~ after the licensee first becomes aware ~~[occurrence]~~ of the event or circumstance.

(2) ~~[(3)]~~ A request by a licensee to reschedule an ISC based on the failure of the agency to send notice not later than the 30th day ~~[at least 30 days]~~ before the date scheduled for ~~[of]~~ the ISC, as required by Section 164.003 of the Act, shall be granted, provided the request is received by the agency within five business days after the late notice is received by the licensee.

(c) Prior to the ISC, the board representatives shall be provided with the information sent to the licensee by the board staff and all information timely received in response from the licensee. Information must be received from the licensee at least five business days prior to the ISC.

(d) An ISC may be conducted by only one panelist if:

(1) the ISC is related to an order of the board, such as to show compliance, a probation appearance, or a request for termination or modification, or

(2) the affected licensee waives the requirement that at least two panelists conduct the ISC. In such situations, the panelist may be either a physician, physician assistant, or acupuncturist (depending on the licensee involved) or a member who represents the public.

(e) The board representatives shall allow:

(1) the board staff to present a summary of the allegations and the facts that the board staff reasonably believes could be proven by competent evidence at a formal hearing;

(2) the licensee to reply to the board staff's presentation and present facts the licensee reasonably believes could be proven by competent evidence at a formal hearing;

(3) presentation of evidence by the board staff and the licensee, which may include medical and office records, x-rays, pictures, film recordings of all kinds, audio and video recordings, diagrams, charts, drawings, and any other illustrative or explanatory materials which in the discretion of the board representatives are relevant to the proceeding;

(4) representation of the licensee by an authorized representative;

(5) presentation of oral or written statements by the licensee or authorized representative;

(6) presentation of oral or written statements or testimony by witnesses;

(7) questioning of the witnesses in a manner prescribed by the panel;

(8) questioning of the licensee;

(9) closing statement by the licensee;

(10) closing statement by the board's staff; and

(11) upon request by board representatives, the board staff may propose appropriate disciplinary action and the licensee or authorized representative may respond.

(f) The board representatives, board staff, the licensee, and the licensee's authorized representative shall be present during the presentation of statements and testimony during the ISC.

(g) Notwithstanding subsection (f) of this section, the board representatives may allow a complainant or witness to testify outside the physical presence of the licensee to protect the person from harassment and/or undue embarrassment, for personal safety concerns, or for any other demonstrated and legitimate need. If such testimony is allowed, arrangements will be made to allow the licensee to listen to the testimony contemporaneously as it is given.

(h) All evidence that a licensee wishes the board representatives to consider at the ISC must be received by [tø] the board at least five business days before the ISC. The board representatives may refuse to consider any evidence not submitted in a timely manner without good cause. If the board representatives allow the licensee to submit late evidence, the representatives may reschedule and/or recommend an additional administrative penalty for the late submission.

(i) A board attorney, who has not been involved with the preparation of the case, shall be designated as the Hearings Counsel and shall be present during the ISC and the panel's deliberations to advise the panel on legal issues that arise during the ISC. The Hearings Counsel shall be permitted to ask questions of participants in the ISC to clarify any statement made by the participant. The Hearings Counsel shall provide to the ISC panel a historical perspective on comparable cases that have appeared before the board, keep the

proceedings focused on the case being discussed, and ensure that the board's employees and the licensee have an opportunity to present information related to the case.

(j) At the ISC, the board representatives shall attempt to resolve disputed matters and the representatives may call upon the board staff at any time for assistance in conducting the ISC.

(k) The board representatives shall prohibit or limit access to the board's investigative file by the licensee, the licensee's authorized representative, the complainant(s), witnesses, and the public consistent with Act, §164.007(c).

(l) Although the participants may make notes, mechanical or electronic recordings shall not be made of the ISC, settlement discussions, or mediation efforts.

(m) The ISC shall be informal and shall not follow the procedures established under this title for formal board proceedings.

(n) At the conclusion of the presentations, the board representatives shall deliberate in order to make recommendations for the disposition of the complaint or allegations. An employee of the board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the affected licensee, the licensee's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations. The Hearings Counsel may be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before the board.

(o) The board representatives may:

(1) make recommendations to dismiss the complaint or allegations. The dismissal of any matter is without prejudice to additional investigation and/or reconsideration of the matter at any time;

(2) make recommendations regarding an agreed order and propose resolution of the issues to the licensee to be reduced to writing and processed in accordance with §187.19 of this title (relating to Resolution by Agreed Order);

(3) defer the ISC, pending further investigation;

(4) direct that a formal Complaint be filed with SOAH⁵ if the ISC Panel determines that no agreed settlement is likely to be successful⁶; [or]

(5) recommend to the President of the board that a Disciplinary Panel be convened to consider the temporary suspension or restriction of the licensee's license; or ⁷ if the ISC Panel determines that the licensee poses a continuing threat to the public welfare⁸;

(6) recommend the imposition of an administrative penalty pursuant to §§187.75 - 187.82 of this chapter (relating to Procedural Rules).

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

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PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 205. CEMETERIES AND CREMATORIES

22 TAC §205.2

Pursuant to §711.012(b) Texas Health and Safety Code, the Texas Funeral Service Commission (commission) proposes to add a new rule to Title 22, Part 10, Texas Administrative Code, Chapter 205, §205.2 in order to give effect to §711.041(a) Texas Health and Safety Code, which provides that any person who wishes to visit a cemetery or private burial grounds for which no public ingress or egress is available shall have, for the purposes usually associated with cemetery visits and during reasonable hours, the right to reasonable ingress and egress for the purpose of visiting the cemetery or private burial grounds.

In the context of §711.012(b) and §711.041(a), Texas Health and Safety Code, it came to the attention of the commission that, for a variety of reasons, access to many cemeteries and private burial grounds across the state may have been cut off. Accordingly, the commission asked the Executive Director of the commission to take the necessary steps (including holding public meetings at appropriate locations around the state) to develop information on this issue.

Initially, the Executive Director held public meetings in Marshall, Texas on April 24, 2008 and in Centerville, Texas on April 25, 2008. The meeting in Marshall focused on ingress and egress to Love Cemetery in Harrison County while the meeting in Centerville focused on ingress and egress to Boggy Cemetery in Leon County. Following those meetings, the commission heard testimony with respect to the issue at its meeting in Austin, Texas on June 17, 2008. Section 205.2 as proposed here is informed by discussion at the initial public meetings in Marshall and Centerville and by the testimony before the commission on June 17, 2008.

The following is a subsection summary of the provisions of §205.2 as proposed here:

Proposed subsection (a) recites the commission's statutory authority under §711.012(b), Texas Health and Safety Code, to promulgate rules regarding ingress and egress to certain cemeteries and private burial grounds;

Proposed subsection (b) cites the statutory mandate that ingress and egress be provided to certain cemeteries and private burial grounds as set forth in §711.041(a), Texas Health and Safety Code;

Proposed subsection (c) cites §711.041(b), Texas Health and Safety Code, for the proposition that the owner or owners of land may designate REASONABLE routes of ingress and egress to certain cemeteries and private burial grounds;

Proposed subsection (d) further defines the term "owner or owners of lands surrounding a cemetery or private burial grounds" as used in §711.041(b), Texas Health and Safety Code;

Proposed subsection (e) further defines the term "reasonable hours" as used in §711.041(a), Texas Health and Safety Code;

Proposed subsection (f) further defines the phrase "purposes usually associated with cemetery visits" as used in §711.041(a), Texas Health and Safety Code;

Proposed subsection (g) further defines the word "reasonable" in the phrase "designate the route or routes of reasonable ingress and egress" as set out in §711.041(b), Texas Health and Safety Code;

Proposed subsection (h) instructs persons or entities desiring access within the framework established by proposed subsections (d) - (g) to contact land owners to begin a process of negotiation and instructs that the Executive Director should be notified that contact is being initiated;

Proposed subsection (i) provides for the filing of a signed agreement with the Executive Director if agreement is reached with regard to a visitation schedule and reasonable route or routes of ingress and egress;

Proposed subsection (j) provides that if agreement is not reached, any party may request that the dispute be mediated pursuant to the commission's alternative dispute resolution policy and procedure;

Proposed subsection (k) provides for the filing of a successfully mediated agreement with the Executive Director;

Proposed subsection (l) provides that if the mediation is not successful, the Executive Director shall file a proposed order with the commission that sets out a reasonable visitation schedule and a route or routes of reasonable ingress and egress to a cemetery or private burial grounds for which no public ingress or egress is available;

Proposed subsection (m) provides that all interested parties will be notified of the meeting of the commission and sent a copy of the Executive Director's proposed order no less than 30 days prior to the commission meeting at which adoption of the proposed order will be considered; subsection (m) also provides that all parties will be given an opportunity to be heard at the commission meeting at which adoption of the proposed order will be considered; and

Proposed subsection (n) provides that the commission may adopt the order as proposed by the Executive Director, adopt the order with changes, or defer action to a future meeting; subsection (n) also provides that an order adopted by the commission under §205.2 is final.

Section 205.2 as proposed here was the subject of four additional public meetings hosted by the Executive Director. An additional meeting was hosted in Marshall on September 3, 2008 and one in Waco on September 4, 2008. Public meetings were also held in Jourdanton and Junction on September 23 and 24, respectively. Some of the major questions and comments that were articulated at these meetings with respect to §205.2 as proposed here may be summarized as follows:

* What type of ingress/egress is required? Must it be a road? Or, would a walkway or a path suffice?

* Who will be responsible for maintaining the roads that provide for ingress/egress?

* What about including within the rule explicit provisions for maintenance of grounds and roads?

* What about property damage and loss...who is responsible for such liability? For example, who is responsible if a cigarette butt is flicked into grass or timberland?

- * Who opens and closes the gate between 8 and 5? Livestock could be lost.
- * What if a property owner is successfully sued for damages beyond the limits of a liability insurance policy?
- * Why must the rule include property that is not contiguous to a cemetery?
- * What about requiring "hold harmless" language or releases as a condition of entering rather than insurance policies?
- * Is the rule intended to require access for new burials?
- * How will the administration of the rule deal with existing easement agreements that may already be in place between cemetery associations and landowners?
- * Is it intended that there be judicial review of a commission order issued pursuant to the rule?
- * Isn't this just another "unfunded mandate?"
- * Isn't this rule an unconstitutional taking of property?
- * Why is it unreasonable for a landowner to require that visitors have a liability insurance policy?
- * Concerns that an Austin-based commission will be issuing an order where mediation is not successful.
- * Ingress/egress to come across property where there is no public road:
would devalue the property;
raises privacy issues, especially where access is near private residence;
raises liability issues referencing persons being injured during ingress/egress and potential damage to property; could result in major traffic across private property; and
could result in a road being constructed in such a way as to divide parcels of land in a disadvantageous manner.
- * Ingress/egress to pay respects to deceased loved ones is a right.
- * Must work together under the law, but those denying access should be penalized (fined) for each day of denied access. The rule should impose penalties on those denying access. Why shouldn't there be criminal penalties for the denial of access?
- * There must be monetary compensation to private landowner for the construction and maintenance of private roads. It should be provided by those seeking access; or, the state should acquire an access road from a landowner.
- * What about the state using eminent domain?
- * With respect to liability insurance, not all visitors are represented by a cemetery association--what about them?
- * What about individual researchers who want to visit cemeteries for historical purposes? Is it intended that they be allowed access to them?
- * What amount of liability insurance is reasonable? What type of policy?
- * With regard to permissible "purposes" for which access to cemeteries is guaranteed, what is intended with respect to cleaning/cutting/clearing, etc? May one enter to cut down vines and provide maintenance?

- * What about the location for mediation? Mediation should be local and not in Austin. Mediation should be free and spelled out as such in the rule.
- * What if there is no response by the landowners to a "contact"? What if a landowner refuses to appear at mediation?
- * What about unmarked burial grounds? Are those intended to be included in the scope of the rule?
- * What about using the National Guard reserves to maintain ingress/egress roads?
- * What about situation where the "buck is passed" regarding access between a landowner and the landowners tenant?
- * Objection to the fact that those denied access in violation of the law must incur legal fees in order to gain access; law must be changed to give the commission a mechanism and means by which to enforce access.
- * What about access for genealogical research purposes? For purposes of maintenance and inventory?
- * May one enter to maintain the route of ingress/egress itself?
- * What if one is not related to decedents in a cemetery to which one seeks access?
- * One must "inform the executive director" (ED) before contacting the owners? How does one contact the ED? Who is to file with the ED?
- * Does an agreement reached between the parties or an order issued by the commission run with the land?
- * For reasonable hours, why not "sunrise - sunset" instead of 8 to 5?
- * Why not provide in the rule for ingress and egress just on a few days a year?
- * Eliminate insurance requirement and permit public to enter at "own risk."
- * Time frame concerns--the process will take too long; need timeliness.
- * Local law officials should be involved in enforcement of agreements reached or orders entered. The commission will not be able to act in a timely manner if a dispute arises.
- * Process is too burdensome in terms of cost and time.
- * What about fines? Penalties? Interest? Where are the consequences?
- * What if one or more landowners won't comply with an agreement reached among the parties or an order issued by the commission?

The above summary of some of the major oral questions and comments from the public meetings that were held in Marshall, Waco, Jourdanton, and Junction subsequent to the drafting and informal circulation of §205.2 is included here to provide information to persons who may wish to provide written comment during the formal 30-day public comment period provided for in §2001.023, Texas Government Code.

FISCAL NOTE. Chet Robbins, Executive Director, has determined that for each of the first five years the proposed new §205.2 is in effect, there will be no fiscal impact to state or local government as a result of the enforcement of the rule. There

will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Mr. Robbins also has determined that for each year of the first five years the proposed new §205.2 proposed here is in effect, the public benefits of the rule will be the facilitation of orderly visits to cemeteries to which ingress and egress were previously unavailable. Any costs to persons required to comply with this new rule for each of the first five years the new rule will be in effect are the result of the enactment of §711.012(b) and §711.041(a), Texas Health and Safety Code and not the result of the adoption, enforcement, and administration of the new rule.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Mr. Robbins has determined that new §205.2 as proposed here will not have an adverse economic impact on small businesses or micro businesses. Therefore, a regulatory flexibility analysis is not required.

TAKINGS IMPACT STATEMENT. Section 2007.043 of the Private Real Property Rights Preservation Act (the Act is compiled as Chapter 2007, Texas Government Code) requires that a written takings impact assessment that comports with evaluation guidelines issued by the Attorney General be prepared under certain circumstances when a proposed governmental action will affect the use and value of "Private Real Property" as defined in the Act (see §2007.002(4) and §2007.002(5)(B), Texas Government Code). Because it merely provides a framework for the implementation of legislatively prescribed ingress and egress to certain cemeteries and private burial grounds, §205.2 as proposed here does not in and of itself affect the use and value of any particular tract of land. Section 205.2 does, however, provide a mechanism whereby it is possible that the commission might consider the adoption of an order that would require the preparation of a written takings impact statement prior to the order's adoption of the amendment as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Mr. Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or electronically to chet.robbins@tfsc.state.tx.us.

The new section is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

No other statutes, codes, or articles are affected by this section.

§205.2. Ingress and Egress to Cemeteries and Private Burial Grounds Which Have No Public Ingress or Egress.

(a) Section 711.012(b), Texas Health and Safety Code, authorizes the Texas Funeral Service Commission (commission) to promulgate rules to effectuate §711.041, Texas Health and Safety Code.

(b) Section 711.041(a), Texas Health and Safety Code, provides that any person who wishes to visit a cemetery or private burial grounds for which no public ingress or egress is available shall have, for the purposes usually associated with cemetery visits and during reasonable hours, the right to reasonable ingress and egress for the purpose of visiting the cemetery or private burial grounds.

(c) Section 711.041(b), Texas Health and Safety Code, provides that the owner or owners of lands surrounding a cemetery or private burial grounds may designate the route or routes of reasonable ingress and egress.

(d) The term "owner or owners of lands surrounding a cemetery or private burial grounds" as used in §711.041(b), Texas Health and Safety Code, means any person, persons, entity, or entities that own lands that lie between a public road and a cemetery or private burial grounds that has no public ingress or egress irrespective of whether such lands are contiguous to the cemetery or private burial grounds or to the public road.

(e) The term "reasonable hours" as used in §711.041(a), Texas Health and Safety Code, means 8:00 a.m. to 5:00 p.m. on any day of the week. It is provided, however, that the hours during the day and the days of the week during which ingress and egress shall be allowed may be more particularly circumscribed by an agreement reached or an order entered pursuant to subsections (i) - (n) of this section.

(f) The phrase "purposes usually associated with cemetery visits" as used in §711.041(a), Texas Health and Safety Code, means a visit by any person or group of persons for the purpose of interring a person or persons in a cemetery or private burial grounds or for the purpose of paying respect to a person or persons interred in a cemetery or private burial grounds.

(g) The use by the Texas Legislature of the word "reasonable" in the phrase "designate the routes of reasonable ingress and egress" as set out in §711.041(b), Texas Health and Safety Code, means:

(1) that an "owner or owners of land surrounding the cemetery or private burial grounds" may not designate a route or routes of ingress and egress that discourages visits to a cemetery or private burial grounds during "reasonable hours" for the "purposes usually associated with cemetery visits" as defined in subsections (d) and (e) of this section; and

(2) that an owner or owners of lands surrounding a cemetery or private burial grounds may not thwart the right of ingress and egress guaranteed by §711.041, Texas Health and Safety Code, by the imposition of liability insurance or other indemnification requirements that render impractical or impossible visits during "reasonable hours" for the "purposes usually associated with cemetery visits" as defined in subsections (d) and (e) of this section.

(h) Within the framework provided by subsections (d) - (g) of this section, persons or entities that are interested in establishing a visitation schedule and a route or routes of reasonable ingress and egress with respect to a particular cemetery or private burial grounds shall make contact with and negotiate with each owner or owners of lands that surround the cemetery or private burial grounds for the purpose of agreeing to and reducing to writing the visitation schedule and route or routes of reasonable ingress and egress to a cemetery or private burial grounds for which no public ingress and egress is available. The persons or entities making contact with the owner or owners of land that surround such a cemetery or private burial grounds shall inform the executive director of the commission that such contact is being initiated.

(i) If the parties reach agreement during the negotiations prescribed by subsection (h) of this section, the persons or entities making contact with the owner or owners of lands shall file a written agreement signed by all parties with the executive director of the commission.

(j) If the parties cannot reach agreement during the negotiations prescribed by subsection (h) of this section, any party to the negotiations may request of the executive director of the commission that the dispute be mediated pursuant to the commission's alternate dispute resolution policy and procedure as set out in §207.1 of this title (relating to Alternative Dispute Resolution Policy and Procedure).

(k) If the mediation is successful, the mediated agreement shall be reduced to writing and filed with the executive director of the commission.

(l) If the mediation is not successful, the executive director shall propose to the commission the adoption of an order setting out a reasonable visitation schedule and a route or routes of reasonable ingress to the cemetery or private burial grounds for which no public ingress or egress is available.

(m) Notice and a copy of the proposed order will be sent by certified mail to all interested parties no less than 30 days prior to the commission meeting at which the adoption of an order will be considered. At the meeting at which the adoption of an order will be considered, each affected party will be given an opportunity to offer testimony with respect to the proposed order. Subject to expansion by the commission on the day of the meeting, time limits on testimony shall be set by the executive director in the notice accompanying a copy of the proposed order.

(n) After consideration of the proposed order and any testimony taken, the commission may adopt the order as proposed, may adopt the order with changes, or may defer action to a future meeting. An order adopted by the commission under this section is final and may not be appealed.

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

Filed with the Office of the Secretary of State on October 15, 2008.

TRD-200805464

O.C. Robbins

Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: November 30, 2008

For further information, please call: (512) 936-2466



PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 365. LICENSING AND REGISTRATION

22 TAC §365.5

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §365.5, which set forth registration, license and endorsement renewal requirements.

The amendments to §365.5 are proposed to clarify Board policy which provides alternate methods for certain individuals to receive credit for Continuing Professional Education (CPE) required for the renewal of a license issued by the Board. The individuals who are the subject of the rule amendments typically receive much more than the minimum 6 hours of CPE required by the Plumbing License Law and Board Rules, during the course of the individuals' regular duties. The individuals are CPE Course Instructors who are fully approved by the Board to teach CPE, Board employees who monitor CPE classes for compliance with the Plumbing License Law, and Board employees who review all Course Materials during the Board's approval process and complete the Board's Course Instructor Certification Workshop annually.

Robert Maxwell, Executive Director, has determined that for the first five-year period the amendments are in effect there will be

no fiscal impact on state or local government required to comply with the amendments as proposed.

Economic Impact Statement, Regulatory Flexibility Analysis and Public Benefit - The rule amendments will have no adverse fiscal impact on small businesses and persons required to comply with the amendments as proposed. Public health and safety will not be diminished as a result of these rule amendments. The public's health and safety will continue to benefit from the additional CPE provided to these individuals during the course of their professional duties.

Comments on the proposed rule changes may be submitted within 30 days of publication of these proposed rule amendments in the *Texas Register*, to Robert L. Maxwell, Executive Director, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

The amendments to §365.5 are proposed under and affect Title 8, Chapter 1301, Occupations Code, as amended by the 78th Legislature ("Plumbing License Law" or "Law"), §1301.251, §1301.404, and the rule it amends. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.404 requires the Board to adopt criteria and administer CPE programs and allows the Board to exempt certain persons from the requirements of that section, if the Board determines the exemption is in the public interest. The amendments to §365.5 are also proposed under Texas Government Code §2006.002, as amended by the 80th Legislature, House Bill 3430, which requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses.

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

§365.5. Renewals.

(a) The Board shall inform a licensee or registrant of the impending expiration of a license, registration or endorsement by sending written notice at least 30 days before its expiration date to the licensee's last known mailing address according to Board records.

(b) A licensee or registrant may renew an unexpired license, registration or endorsement before its expiration date by meeting all renewal requirements and paying the fee required by the Board.

(c) The licensee's or registrant's failure to receive the notice of expiration will not alter the licensee's or registrant's responsibility to renew the license or registration each year or endorsement every three years by its expiration date.

(d) Any Journeyman Plumber, Master Plumber, Tradesman Plumber-Limited Licensee or Plumbing Inspector wishing to renew a license must have proof submitted to the Board of successful completion of the required continuing professional education (CPE) course or courses, subject to the additional requirement in subsection (e) of this section.

(e) Any license holder with a medical gas endorsement must complete a Board approved medical gas continuing professional education class within the three-year period of the endorsement. The classroom hours shall consist of instruction of the most current edition of the National Fire Protection Association (NFPA) 99C, Standard on Gas and Vacuum Systems, and the changes therein. No license holder with a medical gas endorsement may count the same medical gas continuing professional education class twice towards meeting the continuing professional education requirements for renewal of the medical gas endorsement on a plumbing license.

(f) Any license or endorsement holder who lives in a county having no city with a population in excess of 100,000, or resides out of state, or who submits written proof to the Board from a physician stating the medical reason that the licensee is unable to attend a CPE class, may fulfill the continuing professional education requirements by completing a correspondence course approved by the Board.

(g) A person who holds a license and is:

(1) a member of the United States armed forces, a reserve component of the United States armed forces or the state military forces;

(2) is ordered to active duty by proper authority; and

(3) submits documentation acceptable to the Board which demonstrates the person was unable to renew the license in a timely manner due to the active duty service is:

(A) exempt from paying a late renewal fee; and

(B) entitled to an additional amount of time, equal to the total number of years or parts of years that the person serves on active duty, to complete any continuing education requirements and any other requirements related to the renewal of the person's license.

(h) Under §1301.404(f) of the Plumbing License Law, the following individuals may be credited as having fulfilled their continuing professional education (CPE) requirements for the current CPE course year, in order to renew a license issued by the Board:

(1) Any CPE Course Instructor who is fully approved under §365.14 of this chapter; and

(2) any employee of the Board who:

(A) monitors a current CPE class for compliance with the Plumbing License Law and Board Rules; or

(B) reviews all approved Course Materials under §365.14 of this chapter and completes the current Course Instructor Certification Workshop conducted by the Board.

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

Filed with the Office of the Secretary of State on October 15, 2008.

TRD-200805461

Robert L. Maxwell

Executive Director

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: November 30, 2008

For further information, please call: (512) 936-5224



22 TAC §365.14

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §365.14, which sets forth the criteria adopted by the Board for continuing professional education (CPE) programs for the renewal of licenses issued by the Board.

The amendments to §365.14 are proposed in order to delete obsolete language, update procedures to current practices and implement new procedures to ensure that the programs continue to provide quality continuing professional education to the licensees. The proposed amendments will result in better pro-

tection of the health and safety of the public through better education of the plumbing industry.

The following subsections are proposed to be amended:

Section 365.14(a) deletes obsolete language and clarifies the intent of Course Materials to be used as reference material.

Section 365.14(a)(4) replaces obsolete reference to Vernon's Civil Statutes.

Section 365.14(a)(6) allows draft versions of Course Materials to be submitted to the Board in a draft form.

Section 365.14(a)(7) eliminates reference to evaluation forms no longer required under current practice.

Section 365.14(a)(12)(C) requires Course Material applicants to report felony convictions.

Section 365.14(a)(12)(D) clarifies current requirement for Course Material applicants to submit certificate of good standing from Texas Comptroller of Public Accounts.

Section 365.14(a)(12)(G) requires contact information for Course Material applicants.

Section 365.14(a)(13) clarifies language which requires a Course Material Provider to sell Course Materials at the same price, regardless to whom the Course Material Provider chooses to sell Course Materials.

Section 365.14(a)(14) eliminates reference to evaluation forms no longer required under current practice.

Section 365.14(a)(16) clarifies the approval period of Course Materials and adds flexibility for periods of use.

Section 365.14(a)(17)(A) clarifies that Course Materials must accompany Course Material Provider applications when submitted to the Board for approval.

Section 365.14(b)(5) provides an exception to CPE class size limitations to military personnel on active duty.

Section 365.14(b)(7) clarifies requirements for CPE Certificates of Completion and eliminates obsolete language.

Section 365.14(b)(10) clarifies CPE class notification requirements, allows Course Providers to notify the Board of scheduled CPE classes via the Course Provider's website, and prescribes procedures to help avoid cancellation of CPE classes by Course Providers, including procedures for rescheduling classes when necessary.

Section 365.14(b)(11) clarifies the intent of required self monitoring of CPE classes by the Course Providers.

Section 365.14(b)(12) eliminates outdated language regarding the Course Instructor application process and clarifies current requirements.

Section 365.14(b)(15)(C) requires Course Provider applicants to self report felony convictions.

Section 365.14(b)(15)(D) clarifies current requirement for Course Provider applicants to submit certificate of good standing from Texas Comptroller of Public Accounts.

Section 365.14(b)(15)(F) requires Course Providers to include their electronic mail address in the application.

Section 365.14(b)(15)(K) revises content requirements for Course Provider reports submitted to the Board.

Section 365.14(b)(15)(N) requires Course Providers to designate a primary contact person who will communicate with the Board.

Section 365.14(b)(16)(C) eliminates unnecessary reference to Course Provider evaluation forms. Unsatisfactory evaluations of Course Providers and Course Instructors are more effectively handled through the Board's complaint processes.

Section 365.14(b)(18) clarifies approval period of Course Providers.

Section 365.14(b)(19) deletes obsolete language regarding submittal of Course Provider applications.

Section 365.14(c) clarifies current requirements that Course Instructor applications must be submitted by a Course Provider.

Section 365.14(c)(4)(A) clarifies that Course Instructors must ensure that their classroom CPE presentations must be based only on Board approved Course Materials and other materials approved by the Board.

Section 365.14(c)(4)(D) requires the Course Instructor to notify the Course Provider immediately, if the Course Instructor is unable to provide instruction for a CPE class that the instructor was scheduled to instruct, to allow the Course Provider to make every effort to provide a substitute Course Instructor to avoid cancelling the class.

Section 365.14(c)(7) Requires the Course Instructor to, at the beginning of each CPE class, provide each individual student with a separate single page handout containing the text of §365.14(c)(4) - (6), in a format provided by the Board. This will ensure that each student receives notice of what is required of the instructor and the student during the CPE class.

Robert Maxwell, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no fiscal impact on state or local government required to comply with the amendments as proposed.

Economic Impact Statement and Regulatory Flexibility Analysis - The amendments to §365.14 will have no adverse fiscal impact on the persons or small businesses or associations required to comply with the rules.

Mr. Maxwell has determined that Course Material Providers will benefit from a cost savings as a result of amendments proposed under §365.14(a)(6), which allows draft versions of Course Materials to be submitted for approval in a less expensive draft form.

Mr. Maxwell has determined that any cost incurred to Course Providers due to the change proposed under §365.14(c)(7), which will require the Course Instructors to provide a separate handout to each student, would be offset by the cost savings created by proposed changes under §365.14(b)(15)(K), which eliminates the requirement for student evaluation forms and compilations of associated data.

Comments on the proposed rule changes, including the Economic Impact Statement and Regulatory Flexibility Analysis, may be submitted within 30 days of publication of these proposed rule amendments in the *Texas Register*, to Robert L. Maxwell, Executive Director, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

The amendments to §365.14 are proposed under and affect Title 8, Chapter 1301, Occupations Code, as amended by the 78th

Legislature ("Plumbing License Law" or "Law"), §1301.251, Subchapter I, Board rules Chapter 367 and the rule it amends. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Subchapter I sets forth the Board's disciplinary procedures. Chapter 367 of the Board rules sets forth the Board's enforcement procedures, grounds for disciplinary actions and standards of conduct for licensees. The amendments to §365.14 are also proposed under Texas Government Code §2006.002, as amended by the 80th Legislature, House Bill 3430, which requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses.

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

§365.14. Continuing Professional Education Programs.

(a) Course Materials--In preparation for the Continuing Professional Education course year, which begins on July 1, of each year, [Beginning in preparation for the 2000-2001 Continuing Professional Education year (begins on July 1, 2000);] the Board will annually approve Course Materials to be used for the Continuing Professional Education (CPE) required for renewal of Journeyman Plumber, Master Plumber, Tradesman Plumber-Limited Licensee and Plumbing Inspector Licenses. The Course Materials are the printed materials that are the basis for a substantial portion of a CPE course and which are provided to the Licensees for use in the classroom, correspondence courses and future reference by the Licensees (students). The provider of Course Materials, Course Provider and Course Instructor shall encourage the student to retain the Course Materials for future reference and shall not purchase the used Course Materials from the student or otherwise offer any incentive to the student to not retain the Course Materials. Board approval of Course Materials will be subject to all of the terms and conditions of this Section. The following minimum criteria will be used by the Board in considering approval of Course Materials:

(1) The Course Materials will provide the basis for a minimum of six classroom hours of study. Three of the six hours will be in the subjects of health protection, energy conservation and water conservation, with the remaining three hours covering subjects which shall include information concerning the Act, Board Rules, current industry practices and codes, and subjects from lists of approved subjects published by the Board.

(2) The Board will periodically publish lists of approved subjects.

(3) The Course Materials must be presentations of relevant issues and changes within the subject areas as they apply to the plumbing practice in the current market or topics which increase or support the Licensee's development of skill and competence.

(4) The provider of the Course Materials must provide the Course Materials, as needed, in correspondence course form to comply with §1301.404(e) of the Act and subsection (b)(15)(L) of this section [12B(d) of the Act], which are to be made available for at least three (3) years or as necessary for renewal of an expired license.

(5) The Course Materials may not advertise or promote the sale of goods, products or services.

(6) The Course Materials must be printed and bound and with the exception of the draft versions, must meet the following minimum technical specifications for printing and production:

- (A) Binding--Perfect or Metal Coiled,
- (B) Ink--Full Bleed Color,

(C) Cover Material--80 Pound Gloss Paper,

(D) Page Material--70 Pound

(7) The Course Materials will include ~~[CPE evaluation forms, along with]~~ Board forms used for doing business with licensees, registrants and the public. The Board forms shall be marked as being provided for example purposes only. Course Materials will provide information stating that the most current Board forms are available on the Board's website or by mail upon request.

(8) All Course Materials must have the following characteristics:

(A) Correct grammar, spelling and punctuation,

(B) Appropriate illustrations and graphics to show concepts not easily explained in words, and

(C) In depth and comprehensive presentation of subject matter which increases or supports the skills or competence of the Licensees.

(9) The provider of Course materials must have legal ownership of or an appropriate license for the use of all copyrighted material included within the Course materials. Board approved Course materials will contain a prominently displayed approval statement in 10 point bold type or larger containing the following language: "THIS CONTINUING PROFESSIONAL EDUCATION COURSE MATERIAL HAS BEEN APPROVED BY THE TEXAS STATE BOARD OF PLUMBING EXAMINERS FOR USE IN THE (state year) CPE YEAR. BY ITS APPROVAL OF THIS COURSE MATERIAL, THE TEXAS STATE BOARD OF PLUMBING EXAMINERS DOES NOT ASSUME ANY RESPONSIBILITY FOR THE ACCURACY OF THE CONTENTS OF THE COURSE MATERIAL. FURTHER, THE TEXAS STATE BOARD OF PLUMBING EXAMINERS IS NOT MAKING ANY DETERMINATION THAT THE PARTY PUBLISHING THE COURSE MATERIALS HAS COMPLIED WITH ANY APPLICABLE COPYRIGHT AND OTHER LAWS IN PUBLISHING THE COURSE MATERIAL AND THE TEXAS STATE BOARD OF PLUMBING EXAMINERS DOES NOT ASSUME ANY LIABILITY OR RESPONSIBILITY THEREFOR. THE COURSE MATERIAL IS NOT BEING PUBLISHED BY NOR IS IT A PUBLICATION OF THE TEXAS STATE BOARD OF PLUMBING EXAMINERS."

(10) The provider of Course Materials will conduct instructor training in the use of Course Materials.

(11) The provider of Course Materials will be required to have distribution facilities that will ensure prompt distribution of course materials, facsimile ordering and a statewide toll free telephone number for placing orders. The provider of Course Materials must ship any ordered material within ten business days after the receipt of the order and payment for the course materials.

(12) The Board shall annually approve only individuals, businesses or associations to provide Course Materials. Any individual, business or association who wishes to offer to provide Course Materials shall apply to the Board for approval using application forms prepared by the Board. In order to be approved, the application must satisfy the Board as to the ability of the individual, business or association to provide quality Course Materials as required in this Section and must include:

(A) name and address of individual applicant,

(B) names and addresses of all officers, directors, trustees or members of the governing board of any business or association applicant,

(C) statement by individual applicant, and each officer, director, trustee or member of governing board as to whether he or she has ever been convicted of a felony ~~[or misdemeanor other than a minor traffic violation]~~,

(D) current certificate of good standing issued to the business or association by the Texas Comptroller of Public Accounts for business or association applicants,

(E) fees to be charged for Course Materials,

(F) taxpayer identification number,

(G) name, telephone number and electronic mail address of the individual who is designated by the provider of Course Materials to be responsible for answering inquiries and receiving notifications from the Board.

(13) If the [The] provider of Course Materials sells Course Materials to Course Providers and Licensees, the Course Provider must sell the Course Materials [to all Course Providers and Licensees] at the same price as stated in the application.

(14) The Board may refuse to accept any application for approval as a provider of Course Materials that is not complete. The Board may deny approval of an application for any of the following reasons:

(A) failure to comply with the provisions of this section;

or

(B) inadequate coverage of the materials required to be included in Course Materials. ~~[; or]~~

~~[(C) unsatisfactory evaluations of the Course Materials by Course Providers, Instructors, Licensees, or Board staff.]~~

(15) If an application is refused or disapproved, written notice detailing the basis of the decision shall be provided to the applicant.

(16) A provider's authority to offer the Course Materials for which CPE credit is given begins on July 1, of the calendar year of approval and continues until the Course Materials are no longer required for the renewal of an expired license. When requested in writing, the Board may authorize the use of these Course Materials prior to July 1, for industry related programs. [expires on June 30 of the following calendar year after approval.]

(17) All providers of Course Materials must meet the following time schedule each year for approval of Course Materials:

(A) At least 15 copies each of the draft version of the Course Materials must accompany the Course Material Provider application and be submitted to the Board's office no later than November 15 for Board approval at its January Board meeting.

(B) At least 15 copies each of the revised version of the Course Materials must be submitted to the Board's office no later than March 15, for Board approval at its April Board meeting.

(C) At least 15 copies each of all Course Materials that are approved at the Board's April Board meeting shall be provided to the Board's office in completed form no later than July 1 at no cost to the Board.

(18) A provider's failure to comply with this section constitutes grounds for disciplinary action against the provider or for disapproval of future applications for approval as a provider of Course Materials.

(b) Course Providers--The Board will annually approve only individuals, businesses or associations as Course Providers. Course Providers will offer classroom and correspondence instruction in the

Course Materials used for the Continuing Professional Education (CPE) required for renewal of all licenses issued under the Act. Board approval of Course Providers will be subject to all of the terms and conditions of this Section. The following minimum criteria will be used by the Board in considering approval of Course Providers:

(1) CPE courses shall be presented in one of the following formats:

- (A) Six classroom hours presented on one day
- (B) Two sessions of three classroom hours each presented within a seven day period or
- (C) An approved correspondence course.

(2) Not less than three hours of the classroom course will be in the subjects of health protection, energy conservation and water conservation.

(3) Presentations must be based ~~[primarily]~~ on the Course Materials and any other materials approved by the Board.

(4) In addition to Course Materials, presentations may include videos, films, slides or other appropriate types of illustrations and graphic materials related to the Course Materials.

(5) Course Providers shall limit the number of students for any CPE class to forty-five (45). Course Providers may allow a Course Instructor to admit additional students in excess of forty-five (45) who apply to the Course Instructor for admittance to the class on the day of the class, only if the additional students:

(A) are currently on active duty as members of the United States armed forces, a reserve component of the United States armed forces or the state military forces; and

(B) present valid identification to the Course Instructor which indicates the additional students' status under subparagraph (A) of this paragraph.

(6) A Course Provider may not advertise or promote the sale of any goods, products or services between the opening and closing hours of any CPE class.

(7) Each Course Provider shall furnish a ~~[uniquely numbered]~~ Certificate of Completion of CPE to each Licensee who completes its CPE course. The Certificate of Completion shall state the name of the Course Provider, the name of the student, the course year and the date the CPE course was completed. ~~but only after the licensee has completed the CPE course. The Board will assign the unique numbers to be used on each Certificate to each Course Provider.~~

(8) Each Course Provider shall, at its own expense and in a format approved by the Board, electronically transmit to the Board certification of each Licensee's completion of CPE requirements within forty-eight hours of completion.

(A) The Board may provide training to the Course Provider in the method for electronic transmittal.

(B) The Board may charge a fee to recover its costs for computer software and training in the use of the software to the Course Provider.

(9) Each Course Provider shall be reviewed annually by the Board to ensure that classes have been provided equitably across the state of Texas, except as provided in paragraph (15)(J) of this subsection ~~[\$365.14(b)(15)(J)]~~.

(10) Each Course Provider must notify the Board at least 7 days before conducting a class or electronically post notice of the

class schedule on the Course Provider's website at least 7 days before conducting a class. ~~[classes;]~~

(A) The ~~the~~ notice shall contain the time(s) and place(s) where the classes will occur, and the name of the Course Instructor scheduled for each class.

(B) The notice shall be provided to the Board, whether or not the class is open to all licensees or limited to only a specific group or organization.

(C) The Course Provider shall provide a method to receive immediate notification from the scheduled Course Instructor, in the event that the Course Instructor is unable to provide instruction for the scheduled class; and

(i) the Course Provider shall make every effort to provide a substitute Course Instructor in order to avoid cancelling the scheduled class.

(ii) If cancellation of the class is unavoidable for any reason, the Course Provider shall make every effort to immediately notify each student affected by the cancellation; and

(iii) reschedule the cancelled class as soon as possible; and

(iv) notify the Board of the cancellation within 72 hours.

(11) Each Course Provider will perform self-monitoring of its classes and Course Instructors to ensure compliance with the Act and Board rules and reporting as required by the Board.

(12) Each Course Provider shall use only Course Instructors that have been approved by the Board. Each Course Provider shall annually submit to the Board's office a list of Course Instructors it employs and the instructors' credentials for approval ~~[. Initial lists of Course Instructors, to be approved for the 2002-2003 and later CPE years, must be submitted each year]~~ no later than March 15 for approval by the Board at its April Board meeting. The Board may approve additional Course Instructors who meet the requirements of subsection (c) of this section, at any regularly scheduled Board meeting.

(13) Prior to allowing Course Instructors to teach CPE, Course Providers must provide documentation to the Board showing the instructor's successful completion of Course Materials training.

(14) Course Instructors must comply with subsection (c) of this section. Course Providers shall notify the Board within 10 days of any change of an instructor's employment status with the Course Provider.

(15) Any individual, business or association who wishes to be a Course Provider shall apply to the Board for approval using application forms prepared by the Board. In order to be approved, the application must satisfy the Board as to the ability of the individual, business or association to provide quality instruction in the Course Materials as required in this Section and must include:

(A) name and address of individual applicant,

(B) names and addresses of all officers, directors, trustees or members of the governing board of any business or association applicant,

(C) statement by individual applicant, and each officer, director, trustee or member of governing board as to whether he or she has ever been convicted of a felony ~~[or misdemeanor other than a minor traffic violation]~~,

(D) current certificate of good standing issued to the business or association by the Texas Comptroller of Public Accounts for business or association applicants,

(E) taxpayer identification number,

(F) facsimile number, statewide toll free telephone number, Internet web site and [øÆ] electronic mail address,

(G) fees to be charged to Licensees for attending the course, considering the following:

(i) If the Course Provider is not also a provider of Course Materials and will purchase Course Materials, the Course Provider may not charge the Licensees more than its actual cost for the Course Materials supplied to the Licensees by the Course Provider.

(ii) The fees charged to the Licensees for attending the course will be determined by the Course Provider.

(H) an example of a Licensee's Certificate of Completion of CPE,

(I) CPE class scheduling plan,

(J) plan for providing courses equitably across the state (the following individuals or businesses will not have to comply with this subparagraph:

(i) Employers applying to be approved as Course Providers for the purpose of providing CPE courses only to the employers' employees, and

(ii) Individuals who will not employ Course Instructors other than themselves),

(K) method for compiling statistical data regarding number of CPE classes conducted, students instructed and similar data required to be submitted [~~reporting compilations of Licensee evaluations of Course Materials, Course Provider and Course Instructors~~] to the Board, in accordance with the following:

(i) Course Providers shall provide quarterly reports no later than December 15, March 15, June 15 and September 15, for the first year in which the Course Provider provides CPE courses;

(ii) Renewing Course Providers shall provide only annual reports, no later than September 15 of each year, for the preceding CPE course year.

(L) method for ensuring that only Licensees who meet one or more of the following requirements may receive CPE credit for taking an CPE correspondence course:

(i) any Licensee that lives outside of the State of Texas, or

(ii) lives in a county that does not have a city with a population in excess of 100,000, or

(iii) who has an expired license that requires a CPE course that is no longer available in the classroom, or

(iv) who submits written proof to the Board from a physician stating the medical reason that the licensee is unable to attend a CPE class;

(M) identification of the Course Materials which will be used by the Course Provider; and[-]

(N) the name, telephone number and electronic mail address of the individual who is designated by the Course Provider to responsible for answering inquiries and receiving notifications from the Board.

(16) The Board may refuse to accept any application for approval as a Course Provider that is not complete. The Board may deny approval of an application for any of the following reasons:

(A) failure to comply with the provisions of this section; or

(B) inadequate instruction of the materials required to be included in Course Materials. [- øÆ]

~~[(C) unsatisfactory evaluations of the Course Provider by Licensees or Board staff.]~~

(17) If an application is refused or disapproved, written notice detailing the basis of the decision shall be provided to the applicant.

(18) A Course Provider's authority to offer instruction in the Course Materials for which CPE credit is given, begins on July 1, of the calendar year of approval and expires on June 30, of the following calendar year after approval.

(19) ~~All [Beginning with the 2000-2001 CPE year, the Board will establish the deadline in which applications must be submitted after the effective date of this rule. For the 2001-2002 and following CPE years, all]~~ Course Provider applications must be submitted to the Board office no later than December 1, each year for approval at the Board's January meeting.

(20) The Board shall review Course Providers for quality in instruction. The Board shall also investigate and take appropriate action, up to and including revocation of authority to provide CPE, regarding complaints involving approved Course Providers.

(21) A provider's failure to comply with this section constitutes grounds for disciplinary action, up to and including revocation of authority to provide CPE, against the provider or for denial of future applications for approval as a Course Provider.

(c) Course Instructors--The Board will annually approve Course Instructors to provide the classroom instruction in the Course Materials used for the Continuing Professional Education (CPE) required for renewal of Journeyman Plumber, Master Plumber, Tradesman Plumber-Limited Licensee and Plumbing Inspector Licenses. Board approval of Course Instructors will be subject to all of the terms and conditions of this Section. Course Providers must submit the application of an [An] individual who wishes to be approved by the Board as a Course Instructor, as provided by subsection (b)(12) and (13) of this section [must apply to the Board using an application form approved by the Board]. The following minimum criteria will be used by the Board in considering approval of Course Instructors:

(1) Instructors must be licensees of the Board and attend and successfully complete a Course Instructor Certification Workshop each year conducted by the Board (the Board will charge a fee to recover its costs for conducting the Course Instructor Certification Workshop).

(2) Instructors will be required to successfully complete a Board approved program of 160 clock hours which meets the following criteria. The Board will allow credit for approved courses.

(A) 40 hours to provide the Instructor with the basic educational techniques and instructional strategies necessary to plan and conduct effective training programs.

(B) 40 hours to provide the Instructor with the basic techniques and strategies necessary to analyze, select, develop, and organize instructional material for effective training programs.

(C) 40 hours to provide the Instructor with the basic principles, techniques, theories, and strategies to establish and maintain

effective relationships with students, co-workers, and other personnel in the classroom, industry, and community.

(D) 40 hours to provide the Instructor with the basic principles, techniques, theories, and strategies to communicate effectively with the use of instructional media.

(E) To maintain his/her status as an approved Course Instructor, the Instructor shall undergo one of the aforementioned training programs every 12 months such that the entire training (160 hours) is complete within four years.

(3) A Course Instructor may not advertise or promote the sale of goods, products, or services between the opening and closing hours of any CPE class.

(4) As a Course Instructor and Licensee of the Board, a Course Instructor must comply with the Plumbing License Law and Board Rules, including §367.2 of this title [~~the Board Rules~~] regarding Standards of Conduct. An Instructor has a responsibility to his students and employer to:

(A) be well versed in and knowledgeable of the Course Materials and ensure that classroom presentations are based only on the Course Materials and other materials approved by the Board,

(B) maintain an orderly and professional classroom environment,

(C) ensure that only students who receive six contact hours of instruction (excluding any time spent on breaks from instruction) receive credit for attending the CPE class, [~~and~~]

(D) notify the Course Provider immediately, if the Course Instructor is unable to provide instruction for a CPE class that the instructor was scheduled to instruct, to allow the Course Provider to make every effort to provide a substitute Course Instructor to avoid cancelling the class, and

(E) [~~D~~] coordinate with the Course Provider to develop an appropriate method for handling disorderly and disruptive students. A Course Instructor shall report to the Course Provider and the Board, any non-responsive and disruptive student who attends a CPE course. The Board may deny CPE credit to any such student and require, at the student's expense, successful completion of an additional CPE course to receive credit.

(5) The Board shall review Course Instructors for quality of instruction. The Board shall also respond to complaints regarding Course Instructors.

(6) A Course Instructor's failure to comply with this section constitutes grounds for disciplinary action against the Instructor or for disapproval of future applications for approval as a Course Instructor.

(7) At the beginning of each CPE class, the Course Instructor shall provide each individual student with a separate single page handout containing the text of paragraphs (4) - (6) of this subsection, in a format provided by the Board.

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

Filed with the Office of the Secretary of State on October 15, 2008.

TRD-200805462

Robert L. Maxwell
Executive Director
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: November 30, 2008
For further information, please call: (512) 936-5224

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CHAPTER 367. ENFORCEMENT

22 TAC §367.1

The Texas State Board of Plumbing Examiners (Board) proposes amendments to §367.1, which set forth the plumbing codes adopted by the Board. Currently, the Board has adopted the Uniform Plumbing Code (UPC), as published by the International Association of Plumbing and Mechanical Officials (IAPMO) and the International Plumbing Code (IPC), as published by the International Code Council (ICC). As specified by §1301.255(a) of the Plumbing License Law (Title 8, Chapter 1301, Occupations Code), the Board has adopted the two codes as they existed on May 31, 2001, which are the 2000 editions of both codes. Section 1301.255(b) of the Plumbing License Law authorizes the Board to adopt later editions of the two codes.

Each edition of the plumbing codes is continually reviewed by a wide diversity of industry experts. The result is a new edition of the codes being published approximately every three years, ensuring that proper installation of plumbing systems will better protect public health and safety.

The amendments to §367.1 are proposed in response to a petition from Jack D. Burluson, Regional Manager, Governmental Relations, International Code Council (ICC), requesting the Board to adopt the latest editions of the codes, which are the 2006 Uniform Plumbing Code and the 2006 International Plumbing Code. The Board received letters from the public, industry associations and city officials supporting ICC's request to the Board to adopt the most recent editions of the two codes. Those who sent letters of support include John R. Brown, MCP, Director at Large, Building Officials Association of Texas; John R. Brown, MCP, Building Official, City of Rosenberg; John R. Brown, MCP, President, Brazos Valley Chapter, ICC; Harry L. Savio, CAE, Executive Vice President, Home Builders Association of Greater Austin; Lonnie Erwin, Chief Plumbing and Mechanical Inspector, City of Dallas; Bennie M. Reed, Chief Building Official, City of McKinney; Gary Adams, Assistant Building Official, City of McKinney; Paul Peterman, Chief Plumbing Inspector, City of McKinney; David Lancaster, Executive Vice President, Texas Society of Architects; Michael R. Henry, Building & Development Director, City of Rockport; Steve O'Neal, Chief Building Official, City of Lubbock; Chris Haver, CBO, City of College Station; Danny Sikorski, Chief Building Official, City of Bryan; Gil Durant, Inspections Department, City of Seguin; G. Greg Jones, Chief Building Official, City of Coppell; Charlie Hall, Westway Sales, Inc.; Ned Munoz, Director of Regulatory Affairs, Texas Association of Builders; Barbara Lochridge, Executive Director, North Texas Chapter of Plumbing-Heating-Cooling Contractors Association; Selso Mata, Vice President, North Texas Chapter of the ICC; Danny McNabb, Building Inspection Division Manager, City of Austin; Kathryn A. "Toy" Wood, Executive Vice President and CEO, Greater Houston Builders Association; Gary Miles, Assistant Building Official, City of Plano; David Sartor, Building Official, City of Abilene; Scott A. McDonald, Building Official, City of Amarillo; Larry F. Nichols, Deputy Director, Building Permits and

Inspection, City of El Paso and Jim Powell, President, Panhandle Inspectors Association of Texas.

Section 1301.255 of the Plumbing License Law specifically names the UPC and the IPC as the two codes to be adopted by the Board. The UPC contains all of the requirements for installation of plumbing within the one code. However, the IPC requires fuel gas plumbing to be installed according to the requirements of the International Fuel Gas Code and residential plumbing to be installed in accordance with the International Residential Code. Additionally, Chapter 214, Subchapter G of the Local Government Code, requires municipalities to adopt the International Residential Code. For those reasons, the language in the proposed amendment includes the International Fuel Gas Code and the International Residential Codes, the two codes referenced within the International Plumbing Code. Including the names of the two codes referenced within the IPC will provide clarity to the public, plumbing industry, municipalities, and owners of public water systems.

The rule amendments will require individuals who are preparing for examinations administered by the Board to prepare for the examinations using the 2006 Uniform Plumbing Code or the 2006 International Plumbing Code. Applicants for examination who choose the 2006 International Plumbing Code to prepare would also study the 2006 International Fuel Gas Code and the 2006 International Residential Code, as applicable. Applicants who choose the 2006 Uniform Plumbing Code would also study the 2006 International Residential Code, as applicable. The portions of the examinations which cover liquefied petroleum gas (LPG) systems are based on the codes adopted by the Texas Railroad Commission (RRC), which regulates the installation of LPG systems in Texas.

The amendments require plumbing to be installed in accordance with the plumbing codes applicable to the area or jurisdiction where the plumbing is installed. Plumbing installed within local jurisdictions which have adopted a plumbing code will continue to be installed in accordance with the code adopted by the local jurisdiction.

The rule amendments will also require licensed plumbers who install plumbing in geographical areas where no plumbing code has been adopted and not otherwise subject to regulation under the Plumbing License Law or another state law, to install plumbing in accordance with a 2006 edition of a plumbing code adopted by the Board.

Incomplete plumbing installations which commenced under the requirements of an earlier edition of the plumbing codes and prior to the Board's adoption of the 2006 editions of the plumbing codes, may continue to completion under the requirements of the earlier edition.

All LPG systems must be installed in accordance with the rules of the RRC. Many licensed plumbers in Texas are also licensed by the RRC to install LPG systems and, therefore, should be knowledgeable of the codes adopted by RRC.

The rule amendments also update an obsolete reference in §367.1(b), which refers to disciplinary procedures which were previously found in Chapter 365. The amendments correctly state that the procedures are now found in Chapter 367 of the rules.

The amendments also update language in §367.1(h), which establish no new requirements, but reflect changes made to

§1301.255(e) of the Plumbing License Law by the 80th Legislature.

Robert Maxwell, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no fiscal impact on state or local government required to comply with the amendments as proposed.

Economic Impact Statement, Regulatory Flexibility Analysis and Public Benefit - Although §1301.255(b) of the Plumbing License Law authorizes the Board to adopt later editions of the two codes, the Board does not interpret this section as requiring municipalities or owners of public water systems to also adopt later editions of the UPC or IPC. Section 1301.255(d) allows a municipality or owner of a public water system, in adopting a code, to amend any provisions of the code to conform to local concerns that do not substantially vary from Board rules or other rules of the state. A municipality or owner of a public water system may choose whether or not to adopt the latest edition of the UPC or IPC. The rule amendments will have no negative economic impact on municipalities or owners of public water systems, as determined by Mr. Maxwell.

The rule amendments will have no significant negative economic impact on applicants preparing for an examination administered by the Board, because applicants who choose to purchase codes to prepare for an examination will purchase a 2006 edition of the codes instead of purchasing an earlier edition.

The rule amendment will have no significant negative economic impact on licensed plumbers, including small businesses which employ licensed plumbers, who install plumbing in geographical areas where no local jurisdiction has adopted a plumbing code, because the amendments will allow incomplete plumbing installations which commenced under the requirements of an earlier edition of the plumbing codes and prior to the Board's adoption of the 2006 editions of the plumbing codes, to continue to completion under the requirements of the earlier edition.

Mr. Maxwell has also determined that for each year of the first five years the amendments are in effect the public benefits of adopting the proposed amendments will be that, following the effective date of the amendments, licensed plumbers will have passed an examination based on the most current editions of the plumbing codes. Additionally, plumbing installed by licensed plumbers in geographical areas where no local jurisdiction has adopted a plumbing code, will be installed to meet the requirements of the most current editions of the plumbing codes. Plumbing installed in accordance with the latest editions of the plumbing codes will better protect the health and safety of the public.

Comments on the proposed rule changes, including the Economic Impact Statement, Regulatory Flexibility Analysis and Public Benefit, may be submitted within 30 days of publication of these proposed amendments in the *Texas Register*, to Robert L. Maxwell, Executive Director, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

The amendments to §367.1 are proposed under and affect Title 8, Chapter 1301, Occupations Code, ("Plumbing License Law"), §1301.251, §1301.255, and the rule it amends. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.255 allows the Board to adopt later editions of plumbing codes and requires plumbing installed by licensed plumbers in geographical areas where no local jurisdiction has adopted a plumbing

code, to be installed in accordance with the codes adopted by the Board. The amendments to §367.1 are also proposed under Texas Government Code §2006.002, as amended by the 80th Legislature, House Bill 3430, which requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses.

No other statute, article or code is affected by the proposed amendments.

§367.1. *General Provisions.*

(a) Enforcement of all applicable laws including the Act, Board rules, and Board orders vests in the Board.

(b) Enforcement of the Act, local codes, and ordinances, and local standards of competency vests in local authorities. The Board may take disciplinary actions as specified in this chapter [~~Chapter 365 of this title, related to licensing and registrations;~~] in the event of any violation of any of these requirements.

(c) Each locally designated plumbing inspector shall enforce the Act and municipal ordinances and should file complaints with the Board and with local prosecutors.

(d) The Board shall employ individuals knowledgeable of plumbing practice and law as field representative to assist in the enforcement of the Act. A field representative may:

(1) Inspect plumbing work sites to assess compliance with the Law;

(2) Inquire into consumer complaints and reported violations of the Law;

(3) Assist municipal authorities in enforcing the Act; and

(4) Issue citations for violations of the Act.

(e) To protect the health and safety of the citizens of this state, the Board adopts the following plumbing codes~~;~~ ~~as those codes existed on May 31, 2001~~:

(1) the 2006 Uniform Plumbing Code, as published by the International Association of Plumbing and Mechanical Officials; and

(2) the 2006 International Plumbing Code, as published by the International Code Council and the codes incorporated by reference within the 2006 International Plumbing Code, including:-]

(A) the 2006 International Fuel Gas Code; and

(B) the 2006 International Residential Code.

(f) The Board may by rule adopt later editions of the plumbing codes listed under subsection (e) of this section.

(g) Plumbing must be installed in accordance with the plumbing codes applicable to the area or jurisdiction where the plumbing is installed.

(1) [~~(g)~~] Plumbing installed in an area where no plumbing code has been adopted and not otherwise subject to regulation under the Act or another state law by an individual licensed under the Act must be installed in accordance with a plumbing code adopted by the Board under subsection (e) or (f) of this section.

(2) Incomplete plumbing installations which commenced under the requirements of an earlier edition of the plumbing codes and prior to the Board's adoption of the 2006 editions of the plumbing codes, may continue to completion under the requirements of the earlier edition.

(3) Liquefied Petroleum Gas (LPG) piping must be installed in accordance with the rules of the Texas Railroad Commission.

(h) In adopting plumbing codes and standards for the proper design, installation, and maintenance of a plumbing system under this section, a municipality or an owner of a public water system may amend any provisions of the codes and standards to conform to local concerns that do not substantially vary with rules or laws of this state.

(i) Plumbing installed in compliance with a code adopted under subsection (e), (f), or (h) of this section must be inspected by a plumbing inspector. To perform this inspection, the political subdivision may contract with any plumbing inspector or qualified plumbing inspection business, as determined by the political subdivision, that is paid directly by the political subdivision. The plumbing inspector must be licensed as required by §§1301.255(e), 1301.351(b) and 1301.551 of the Plumbing License Law.

(j) The potable water supply piping for every plumbing fixture, including water closet plumbing fixtures and other equipment that use water shall be installed to prevent the back flow of non-potable substances into the potable water system according to the provisions of an adopted plumbing code. Water closet fill valves (ball cocks) shall be of the anti-siphon, integral vacuum breaker type with the critical level (the air inlet portion of the vacuum breaker) installed at least one inch (1") above the flood level rim of the fixture (the inlet of the water closet overflow tube).

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

Filed with the Office of the Secretary of State on October 15, 2008.

TRD-200805460

Robert L. Maxwell

Executive Director

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: November 30, 2008

For further information, please call: (512) 936-5224



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES

The Texas Department of Insurance proposes an amendment to §3.9103(b) and new Subchapter OO, §§3.9601 - 3.9606, concerning the use of the Ultimate 1980 CSO by insurance companies that issue preneed life insurance policies. The Ultimate CSO refers to the Commissioners 1980 Standard Ordinary Mortality Table without 10-year selection factors. It was incorporated into the National Association of Insurance Commissioners' Standard Valuation Law approved in December 1983. A preneed life insurance policy is a life insurance policy or certificate that is (i) issued on a form that is approved by the Department, (ii) issued by an insurance company licensed by the Department, (iii) issued in conjunction with an insurance-funded prepaid funeral benefits contract, and (iv) which, whether by assignment or otherwise, has the purpose of funding prepaid funeral ben-

efits to be provided at the time of or immediately following the death of the insured. Preneed life insurance does not include an annuity contract or policy. A prepaid funeral benefits contract is a contract or agreement for prepaid funeral benefits subject to the requirements of the Finance Code Chapter 154. The proposed amendment and new sections are necessary to permit life insurance companies to continue to use the Ultimate 1980 CSO for calculating minimum reserves and nonforfeiture values for preneed life insurance policies and certificates. The proposal allows the Ultimate 1980 CSO to be used in determining the minimum standard of valuation of reserves and the minimum standard nonforfeiture values for preneed life insurance policies and certificates issued on or after January 1, 2009. Under existing §3.9103(b), life insurance companies are required to convert from using the Ultimate 1980 CSO to only the 2001 CSO Mortality Table for life insurance policies, including preneed life insurance policies, issued on or after January 1, 2009. In 2004, the Society of Actuaries (SOA) commissioned a study of preneed mortality to examine preneed life insurance mortality based upon mortality experience data collected for the years 2000 - 2004. At that time, the 2001 CSO Mortality Table was recognized as the prevailing table for the purposes of calculating minimum reserves and nonforfeiture values for preneed life insurance policies, both on a statutory basis and on a tax basis. As a part of the SOA study, the research completed in 2008 by the Deloitte University of Connecticut Actuarial Center (Deloitte) determined that the 2001 CSO Mortality Table produced inadequate reserves for preneed life insurance policies. Based upon the Deloitte research, the National Association of Insurance Commissioners (NAIC) in March 2008 adopted the Preneed Life Insurance Minimum Standards for Determining Reserve Liabilities and Nonforfeiture Values Model Regulation (Preneed Mortality Model Regulation). This model regulation prescribes the Ultimate 1980 CSO as the appropriate mortality table to use in determining the minimum standard valuation of reserves and the minimum standard nonforfeiture values for preneed life insurance policies issued on or after January 1, 2009. The proposed new sections and amendment are substantially similar to the Preneed Mortality Model Regulation.

This proposal has two primary purposes. First, the proposal allows life insurance companies that issue preneed life insurance policies to continue to use the Ultimate 1980 CSO on and after January 1, 2009, to determine levels of reserve liabilities and nonforfeiture values relative to the expected mortality for these policies. This replaces the requirement in existing §3.9103(b) that insurers must use the 2001 CSO Mortality Table in determining minimum standards for these policies. Second, the proposal allows, but does not require, insurance companies to use the 2001 CSO Mortality Table as the minimum standard for reserves and minimum standard for nonforfeiture benefits for preneed life insurance policies or certificates issued on or after January 1, 2009, and before January 1, 2012. The proposal requires insurers that opt to use the 2001 CSO Mortality Table for the January 1, 2009 - January 1, 2012 period to use the Ultimate 1980 CSO for all preneed life insurance policies issued on or after January 1, 2012. As demonstrated by the Deloitte study, the use of the Ultimate 1980 CSO by life insurance companies will produce more conservative reserves for preneed life insurance policies as opposed to the inadequate reserves produced using the 2001 CSO Mortality Table. Additionally, adoption of the proposed new sections and amendment to be effective before January 1, 2009, will enable insurance companies currently using the Ultimate 1980 CSO to opt to continue to use that table as the minimum standard of mortality for reserves and nonforfeiture values for preneed life

insurance policies issued on or after January 1, 2009. Existing §3.9103(b) requires life insurers to convert to the 2001 CSO Mortality Table by January 1, 2009. This proposal will result in a cost savings to these insurance companies in the amount they would have incurred to convert to the 2001 CSO Mortality Table. Most, if not all, life insurance companies, both large and small, writing preneed life insurance currently use the Ultimate 1980 CSO for their preneed business and have not yet begun the process to convert from the 1980 CSO to the 2001 CSO. This is based upon information filed with the Department and obtained from industry actuaries knowledgeable of small and large companies writing preneed life insurance. According to these industry actuaries, most, if not all, life insurance companies strongly support the adoption of the proposed new sections and amendment. If adopted before the year-end 2008, the insurance companies can continue to use the Ultimate 1980 CSO. If certain specified conditions are met, the proposal also provides insurance companies the option to use the 2001 CSO Mortality Table rather than the Ultimate 1980 CSO for preneed life insurance policies issued on or after January 1, 2009, and before January 1, 2012. The Department anticipates few, if any, insurance companies will elect this option. This is because the Ultimate 1980 CSO produces more appropriate reserves for preneed life insurance policies. Also, most, if not all, life insurance companies will want to avoid incurring the costs to convert to the 2001 CSO Mortality Table. The following is a section-by-section summary of the proposal.

The proposed amendment to §3.9103(b) provides that the requirement that insurance companies use the 2001 CSO Mortality Table in determining minimum standards for policies issued on and after January 1, 2009, is subject to the requirements specified in proposed §§3.9601 - 3.9606. Amendments are also proposed to §3.9103(b) to update the Insurance Code statutory citations. This is necessary to conform the citations to the non-substantive Insurance Code revision.

Proposed §3.9601 specifies the purpose and applicability of the subchapter. Proposed §3.9602 sets forth definitions used in the subchapter. Proposed §3.9603 requires an insurance company to use the Ultimate 1980 CSO as the minimum mortality standard for determining reserve liabilities and nonforfeiture values for both male and female insureds for preneed life insurance policies issued on or after January 1, 2009, except as provided under proposed §3.9606. Proposed §3.9604 specifies the interest rates to be used in determining the minimum standard for valuation of reserves and the minimum standard nonforfeiture values for preneed life insurance. Proposed §3.9605 specifies the method used in determining the standard for the minimum valuation of reserves and minimum nonforfeiture values for preneed life insurance. Proposed §3.9606 provides insurance companies, if certain specified conditions are met, with the option to use the 2001 CSO Mortality Table in lieu of the Ultimate 1980 CSO as the minimum standard for determining reserve liabilities and nonforfeiture values for preneed life insurance policies issued on or after January 1, 2009, and before January 1, 2012. The proposed section also requires insurance companies to use the Ultimate 1980 CSO in the calculation of minimum forfeiture values and minimum reserves for preneed life insurance policies issued on or after January 1, 2012.

The Ultimate 1980 CSO is available from the Actuarial Division, Texas Department of Insurance, 333 Guadalupe, Austin, Texas.

FISCAL NOTE. Mr. Danny Saenz, Senior Associate Commissioner, Financial Program, has determined that, for each year of the first five years the proposed new sections and amendment

will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed new sections and amendment. The proposal will have no effect on local employment or local economy.

PUBLIC BENEFIT/COST NOTE. Mr. Saenz has also determined that for each year of the first five years the proposed new sections and amendment are in effect, there are anticipated benefits, which are detailed in the following discussion. There will be no additional costs for life insurance companies that opt to continue to use the Ultimate 1980 CSO for preneed life insurance policies issued on or after January 1, 2009. However, there will be some optional costs that are likely to be minimal for those insurance companies that opt to use the 2001 CSO Mortality Table for preneed life insurance policies issued January 1, 2009, through January 1, 2012.

Anticipated Public Benefits. The anticipated public benefits are: (i) greater assurance that companies that issue preneed life insurance policies will have appropriate levels of reserve liabilities and nonforfeiture values relative to the expected mortality for these policies; and (ii) cost savings by life insurance companies in the amount the companies would have incurred to convert to the 2001 CSO Mortality Table by January 1, 2009, as required under existing §3.9103(b).

Appropriate Levels of Reserves. As explained in the Introduction portion of this proposal notice, a study of preneed mortality commissioned by the Society of Actuaries determined that the 2001 CSO Mortality Table produced inadequate reserves for life insurance policies issued in support of a prepaid funeral benefits contract. A prepaid funeral benefits contract provides preneed funeral benefits at the time of or immediately following the death of the insured. Discussions between industry and regulators resulted in the NAIC adopting the Preneed Life Insurance Minimum Standards for Determining Reserve Liabilities and Nonforfeiture Values Model Regulation. These standards prescribe the Ultimate 1980 CSO as the appropriate mortality table to use in determining the minimum standard valuation of reserves and the minimum standard nonforfeiture values for preneed life insurance policies issued on or after January 1, 2009. As demonstrated by the preneed mortality study, the use of the Ultimate 1980 CSO by life insurance companies will produce more conservative reserves for preneed life insurance policies as opposed to the inadequate reserves produced using the 2001 CSO Mortality Table. Because the proposed new sections and amendment prescribe the Ultimate 1980 CSO for most preneed life insurance policies issued on or after January 1, 2009, and for all preneed life insurance policies issued on or after January 1, 2012, the public will benefit from life insurance companies having more appropriate reserves supporting preneed policy benefits.

Cost Savings Resulting from Not Having to Convert to 2001 CSO Mortality Table. Additionally, adoption of the proposed new sections and amendment to be effective before January 1, 2009, will enable life insurance companies currently using the Ultimate 1980 CSO to opt to continue to use the Ultimate 1980 CSO as the minimum standard of mortality for reserves and nonforfeiture values for preneed life insurance policies issued on or after January 1, 2009. This will result in a cost savings to these life insurance companies in the amount the companies would have incurred to convert to the 2001 CSO Mortality Table by January 1, 2009, as required under existing §3.9103(b).

Estimated Conversion Costs. The following is an analysis of these estimated conversion costs and therefore, the amount of the estimated savings to each company that opts to continue

to use the Ultimate 1980 CSO for their preneed business. As noted in the Introduction portion of this proposal notice, the Department estimates that most, if not all, life insurance companies currently use the Ultimate 1980 CSO for their preneed business have not yet begun the process to convert to the 2001 CSO Mortality Table, and will opt to continue to use the Ultimate 1980 CSO for preneed life insurance policies issued on or after January 1, 2009. Thus, the Department anticipates that the vast majority of insurance companies writing preneed business, regardless of size, will realize a cost savings in the amount of costs they would have incurred to convert to the 2001 CSO Mortality Table by January 1, 2009, as required under existing §3.9103(b). Based upon discussions with one industry actuary, the Department estimates that a few life insurance companies may have taken steps toward converting from the Ultimate 1980 CSO to the 2001 CSO Mortality Table for their preneed business, but ceased the conversion in anticipation of the adoption of the proposed new sections and amendment. Any such life insurance companies that may have ceased the process to convert to the 2001 CSO Mortality Table pursuant to existing rule §3.9103(b) will realize cost savings as a result of this proposal. These cost savings are estimated to be greater than the actual implementation costs estimated by the Department when §3.9103(b) was proposed and adopted in 2003. For example, actuarial costs in 2003 were estimated to range from \$30 to \$100; compliance costs from \$20 to \$100; and programming costs from \$30 to \$70. The reason for the increase in these estimated costs is primarily due to an increase in personnel and consultant salaries.

The cost components involved in converting to a mortality table, such as the 2001 CSO Mortality Table, for purposes of minimum reserves and nonforfeiture values, include (i) actuarial costs to develop the minimum reserve and nonforfeiture values using the new mortality table; (ii) the costs to develop new life insurance policy forms to incorporate the new mortality table and to file the new forms with the Department for approval; (iii) the data entry and computer programming costs to calculate the minimum reserve and nonforfeiture values for all ages using the new mortality table; (iv) the costs to market the new 2001 CSO Preneed Life Insurance policies; (v) the annual actuarial and reporting costs to support the adequacy of the reserves produced in using the new 2001 CSO Mortality Table for preneed life insurance business; and (vi) any costs related to determining the mortality basis for tax reserves. The Department anticipates that the expenditures required to convert to a different mortality table would have a more significant economic impact on small life insurance companies than on larger insurance companies because small insurance companies typically do not have the additional capital and resources to handle such a significant change.

Actuarial costs to develop the minimum reserve and nonforfeiture values using the new mortality table. Based upon information obtained from industry actuaries, life insurance companies, and firms handling actuary placements, the following is the Department's approach for determining the minimum valuations for reserves and nonforfeiture using the new mortality table. The Department anticipates that an employee in the company's in-house actuarial department or an employee of a consulting actuarial firm engaged by the company would calculate the minimum valuations for reserves and nonforfeiture using the new mortality table. This calculation could be completed in less than two hours, but the completion time will vary significantly based upon the number and complexity of the preneed policy forms involved and computation systems available to the actuary. The Department estimates that the hourly salary rates for actuarial

work will vary significantly depending on whether in-house or consulting actuarial staff is used and could range from \$35 (for in-house actuarial students) to over \$200 (for fully credentialed consulting actuaries). Based on the foregoing cost analysis approach, each individual insurance company has the information necessary to estimate its own costs to calculate the minimum valuations for reserves and nonforfeiture using the new mortality table.

Costs for developing and filing new policy forms. Based upon discussions with industry actuaries, the following is the Department's cost analysis approach for developing and filing new life insurance policy forms with the Department for approval. A member of the company's actuarial, administrative or compliance department staff or a member of a consulting actuarial firm staff engaged by the company would develop a new policy form to include changes reflecting the new mortality table. The Department estimates that the initial drafting could be completed in less than two hours. A member of a company's management staff also may review and approve the new policy form before the form is submitted to the Department for approval, which could take up to two hours. After drafting the new form, a member of the company's actuarial, administrative or compliance department staff or a member of a consulting actuarial firm staff would submit the new form to the Department for approval. The Department may either approve the new form filing or request additional information or revisions to the form filing. The Department anticipates that any additional information or revisions requested by the Department would take no longer than two to four hours to complete. The time estimates for the individual tasks for developing and filing new life insurance policy forms with the Department will vary based upon various factors, including the number and complexity of the policy forms involved and the hourly rates of the person(s) completing these tasks. Based on the foregoing cost analysis approach, each individual insurance company has the information necessary to estimate its own costs in developing and filing new policy forms to incorporate a new mortality table.

Data entry and programming costs. Based upon discussions with industry actuaries, the Department anticipates that an insurer will incur some data entry and computer programming costs to adjust the company's computer system to calculate the minimum reserve and nonforfeiture values for all ages using the new mortality table. Based upon discussions with industry actuaries, the Department anticipates that a member of the company's actuarial or information technology department staff or a member of a consulting actuarial firm staff engaged by the company would perform these calculations at hourly salary rates ranging from \$25 to \$120 for in-house staff to over \$200 for consulting personnel. The actual costs for these hourly rates will vary significantly depending upon whether consulting personnel or company employees are used. The average number of hours to complete these calculations will vary significantly depending on various factors, including, but not limited to, the number of and complexity of the policy forms, the level of automation of the life insurance company, and the number of similar existing policy forms over which these costs can be spread. Each insurance company has the information necessary to estimate its own data entry and programming costs required to incorporate a new mortality table.

Marketing costs. Based upon discussions with industry actuaries, the Department anticipates that a company will incur costs to market the preneed life insurance policies using a new mortality table, including costs to create and disseminate the new

marketing materials. A member of the company's marketing or administrative department staff would create the new marketing materials and distribute them to the marketplace. Based upon discussions with industry actuaries, the Department anticipates that this person's hourly salary rate would range from \$25 to \$125. The amount of time required to create and distribute the materials would vary widely based upon a number of factors, including, but not limited to, the number of preneed life insurance products offered, the means used to create and disseminate the materials, and the size and locations of the company's potential preneed life insurance market. Based on the foregoing cost analysis approach, each insurance company has the information necessary to estimate its own data entry and programming costs required to incorporate a new mortality table.

Annual actuarial and reporting costs. Based upon discussions with industry actuaries, the Department anticipates that a member of a company's in-house actuarial department staff or a member of a consulting actuarial firm staff engaged by the company would annually prepare and file with the Department actuarial information to support the adequacy of the reserves produced in using a new mortality table such as the 2001 CSO Mortality Table for preneed life insurance business. Based upon discussions with industry actuaries, the Department estimates that the hourly salary rates for actuarial work will vary significantly depending on whether in-house or consulting actuarial staff is used and could range from \$35 (for in-house actuarial students) to over \$200 (for fully credentialed consulting actuaries). The average number of hours to prepare and file the actuarial information is dependent on many factors, including the adequacy of the reserves obtained using the new mortality table, the number and complexity of the company's preneed life insurance policy forms, the amount of preneed life insurance business involved, systems available for actuarial analysis, and the hourly rates involved. As mentioned in the Introduction portion of this proposal notice, industry actuaries have indicated to the Department that if an insurance company is required to use the 2001 CSO Mortality Table for its preneed policies issued on or after January 1, 2009, the company would still continue to calculate and hold reserve levels similar to those using the 1980 CSO Mortality Table in order to have adequate reserves. According to these industry actuaries, insurance companies, therefore, will incur additional annual actuarial costs to calculate additional reserves to be held to bring reserves up to those reserve levels produced by using the 1980 CSO Mortality Table. Regardless of which new mortality table is used, each insurance company has the information necessary to estimate its own annual actuarial and reporting costs required to incorporate a new mortality table for use with the company's preneed life insurance business.

Tax implications. The NAIC's preneed mortality model regulation prescribes the continued use of the Ultimate 1980 CSO for preneed insurance policies issued on or after January 1, 2009, and this proposal is substantially consistent with the model regulation. Industry actuaries have indicated to the Department that the failure of at least 26 states to adopt the NAIC model regulation by year-end 2008 will mean that the 2001 CSO Mortality Table likely will be the mortality basis for tax reserves in lieu of the Ultimate 1980 CSO contained in the model regulation. Because, for reasons previously explained, the 2001 CSO Mortality Table appears to produce inadequate reserves for preneed life insurance, these industry actuaries believe that the use of the 2001 CSO Mortality Tables could result in less favorable tax treatment for those life insurance companies issuing preneed insurance policies issued on or after January 1, 2009. Each insur-

ance company either has the in-house expertise or has access to consultants who can provide information on the specific tax effects on the company.

Estimated total cost savings. The Department has received an estimated total cost of \$2,000 to \$3,000 to convert from the Ultimate 1980 CSO mortality table to the 2001 CSO Mortality Table for preneed policies sold in Texas from one industry actuary for a large life insurance company selling preneed life insurance. This estimate, which includes the actuarial, programming, policy form compliance, and marketing costs required for the conversion, is the amount that the actuary estimates that the insurance company will also save by not having to convert from the Ultimate 1980 CSO mortality table to the 2001 CSO Mortality Table as provided under proposed §3.9603. While this is the only total conversion cost estimate that the Department has been able to obtain, this cost information may provide a basis of comparison for use by other insurance companies in estimating the cost savings that will result from not having to convert from the Ultimate 1980 CSO mortality table to the 2001 CSO Mortality Table as provided under proposed §3.9603.

Potential Costs for Persons Required to Comply with the Proposal.

Insurers Currently Using Ultimate 1980 CSO and Opting to Continue to Use that Table. This proposal authorizes life insurance companies to continue to use the Ultimate 1980 CSO for preneed life insurance policies issued on or after January 1, 2009. Based upon preneed policy form filing information submitted to the Department by life insurance companies and information obtained from industry actuaries knowledgeable of small and large life insurance companies writing preneed life insurance, the Department anticipates that most, if not, all life insurance companies currently writing preneed life insurance currently use the Ultimate 1980 CSO for their preneed life insurance business and will opt to continue to use the Ultimate 1980 CSO for preneed life insurance policies issued on or after January 1, 2009. Life insurance companies that opt to continue to use the Ultimate 1980 CSO for preneed life insurance policies issued on or after January 1, 2009, will incur no costs to comply with the proposed new sections and amendment since they can continue to sell their current Ultimate 1980 CSO preneed portfolio of products on and after January 1, 2009, without incurring any additional costs.

Insurers Currently Using the Ultimate 1980 CSO that Opt to Use the 2001 CSO Mortality Table on or After January 1, 2009 and Before January 1, 2012. Proposed new §3.9606 allows a life insurance company the option to use the 2001 CSO Mortality Table in lieu of the Ultimate 1980 CSO as the minimum standard for determining reserve liabilities and nonforfeiture values for preneed life insurance policies issued on or after January 1, 2009, and before January 1, 2012, provided certain specified conditions are met, and requires a life insurance company to use the Ultimate 1980 CSO for preneed life insurance policies issued on or after January 1, 2012. Based upon preneed policy form filing information submitted to the Department by life insurance companies and information provided by industry actuaries, the Department anticipates few, if any, life insurance companies will elect the option under proposed new §3.9606 to use the 2001 CSO Mortality Table for preneed life insurance policies issued on or after January 1, 2009 and before January 1, 2012. This is because the Ultimate 1980 CSO produces more appropriate reserves for preneed life insurance policies and most, if not all, life insurance companies will want to avoid incurring the costs

to convert to the 2001 CSO Mortality Table, if given the choice. For the few, if any, life insurance companies using the Ultimate 1980 CSO that opt to use the 2001 CSO Table for preneed life insurance policies issued on or after January 1, 2009, they can either choose to convert to using the 2001 CSO Mortality Table under existing §3.9103(b) for preneed life insurance policies issued before January 1, 2009, or wait and convert to the 2001 CSO Mortality Table under the proposed new §3.9606 for preneed life insurance policies issued on or after January 1, 2009, and before January 1, 2012. The few, if any, life insurance companies that opt for the latter course of action would incur optional costs similar to the costs to convert from the 1980 CSO Mortality Table to the 2001 CSO Mortality Table, which are detailed under the Anticipated Public Benefits portion of this Public Benefit/Cost Note section under the subheading titled Estimated Conversion Costs. Additionally, proposed new §3.9606(b) requires a life insurance company that opts to use the 2001 CSO Mortality Table to provide, as a part of the actuarial opinion memorandum submitted in support of the company's asset adequacy analysis, an annual written notification to the domiciliary commissioner. Thus, insurance companies would incur optional annual reporting costs and costs for an actuarial certification and analysis to support that reserves provided by the 2001 CSO Mortality Table are adequate. Such optional costs would involve actuarial costs and would vary considerably based upon the actuarial hourly rates and the other factors discussed in the Estimated Conversion Costs subsection under the Anticipated Public Benefits portion of this Public Benefit/Cost Note section, such as the number of and complexity of the policy forms, the level of automation of the life insurance company, and the number of similar existing policy forms over which these costs can be spread.

Any life insurance company that opts under proposed new §3.9606(a) to use the 2001 CSO Mortality Table for preneed life insurance policies issued on or after January 1, 2009, and before January 1, 2012, will be required to convert to using only the Ultimate 1980 CSO mortality table for preneed life insurance policies issued on or after January 1, 2012, pursuant to proposed new §3.9606(c). Such conversion costs are expected to be minimal because the Department anticipates that all of these life insurance companies would have previously used the Ultimate 1980 CSO mortality table for minimum reserves and nonforfeiture values for their preneed business. Therefore, these companies already should have the preneed policy forms and systems in place to resume using and selling their Ultimate 1980 CSO preneed products. Although considered highly unlikely by the Department, a life insurance company may opt to use the 2001 CSO Mortality Table under proposed new §3.9606(a) that did not previously use the Ultimate 1980 CSO for their preneed business. The Department anticipates that such a life insurance company would incur costs similar to the costs to convert from the 1980 CSO Mortality Table to the 2001 CSO Mortality Table, which are detailed under the Anticipated Public Benefits portion of this Public Benefit/Cost Note section under the subheading titled Estimated Conversion Costs.

The probable costs of compliance with the rule are primarily the result of the enactment of the Insurance Code Chapter 425 Subchapter B (Standard Valuation Law) and Chapter 1105 (Standard Nonforfeiture Law for Life Insurance), which require life insurance companies to use the 1980 CSO Mortality Table with or without 10-year selection factors (the Ultimate 1980 CSO), or any ordinary mortality table adopted after 1980 by the NAIC that is approved by rules adopted by the Commissioner for use in the

calculation of minimum reserves and minimum nonforfeiture values.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. The Government Code §2006.002(c) requires that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. The Government Code §2006.001(a)(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than \$6 million in annual gross receipts. The Government Code §2006.001(a)(1) defines "micro business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has not more than 20 employees. The Government Code §2006.002(f) requires a state agency to adopt provisions concerning micro businesses that are uniform with those provisions outlined in the Government Code §2006.002(b) - (d) for small businesses.

The Department estimates that there are approximately 5 to 30 insurance companies that qualify as small businesses or micro businesses under the Government Code §2006.001(a) that are required to comply with this proposal.

This proposal has two primary purposes. First, the proposal allows life insurance companies that issue preneed life insurance policies to continue to use the Ultimate 1980 CSO on and after January 1, 2009, to determine levels of reserve liabilities and nonforfeiture values relative to the expected mortality for these policies. This replaces the requirement in existing §3.9103(b) that insurers must use the 2001 CSO Mortality Table in determining minimum standards for policies issued on and after January 1, 2009. Second, the proposal allows, but does not require, insurers to use the 2001 CSO Mortality Table as the minimum standard for reserves and minimum standard for nonforfeiture benefits for preneed life insurance policies or certificates issued on or after January 1, 2009, and before January 1, 2012. The proposal requires insurers that opt to use the 2001 CSO Mortality Table for the January 1, 2009 - January 1, 2012 period to use the Ultimate 1980 CSO for all preneed life insurance policies issued on or after January 1, 2012. The probable costs of compliance with the rule are primarily the result of the enactment of the Insurance Code Chapter 425 Subchapter B (Standard Valuation Law) and Chapter 1105 (Standard Nonforfeiture Law for Life Insurance), which require life insurance companies to use the 1980 CSO Mortality Table with or without 10-year selection factors (the Ultimate 1980 CSO), or any ordinary mortality table adopted after 1980 by the NAIC that is approved by rules adopted by the Commissioner for use in the calculation of minimum reserves and minimum nonforfeiture values.

Therefore, the proposal does not add any new requirements or costs with which businesses, regardless of size, must comply that are not already required under existing rules and statutes. As required by the Government Code §2006.002(c), the Department has, therefore, determined that the proposal will not have an adverse economic effect on any small or micro business life insurance companies that are regulated by this proposal. The cost analysis in the Public Benefit/Cost Note part of this proposal

notice is also applicable to small and micro business life insurance companies. Under the proposal, small and micro business life insurance companies can continue to use the Ultimate 1980 CSO for their preneed life insurance business and avoid having to incur any costs to convert to the 2001 CSO Mortality Table for policies issued on or after January 1, 2009. Under the proposal, small and micro businesses can opt to convert to the 2001 CSO Mortality Table for their preneed life insurance policies and certificates. However, they are not required to do so either under the proposal or by Insurance Code Chapter 425 Subchapter B (Standard Valuation Law) and Chapter 1105 (Standard Nonforfeiture Law for Life Insurance). In accordance with the Government Code §2006.002(c), the Department has, therefore, determined that a regulatory flexibility analysis is not required because the proposal will not have an adverse impact on small or micro businesses.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 1, 2008 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Danny Saenz, Senior Associate Commissioner, Financial Program, Mail Code 305-2A, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

SUBCHAPTER JJ. 2001 CSO MORTALITY TABLE

28 TAC §3.9103

STATUTORY AUTHORITY. The amendment is proposed under the Insurance Code §§425.058(c), 1105.055(h), and 36.001. Section 425.058(c) provides that for an ordinary life insurance policy issued on the standard basis, excluding any disability or accidental death benefits in the policy and to which Subchapter B, Chapter 1105, applies, the applicable mortality table is the Commissioners 1980 Standard Ordinary Mortality Table; at the insurer's option for one or more specified life insurance plans, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; or any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by commissioner rule for use in determining the minimum standard valuation for a policy to which this subdivision applies. Section 1105.055(h) provides that any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by rules adopted by the Commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors. Section 36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the

Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §425.058 and §1105.055.

§3.9103. *2001 CSO Mortality Table.*

(a) (No change.)

(b) Subject to the conditions stated in this subchapter, the 2001 CSO Mortality Table shall be used in determining minimum standards for policies issued on and after January 1, 2009, to which Insurance Code §425.058(c) [~~Articles 3-28 §3(a)(iii)~~] and §1055.055(h) [~~3-44a §(8)(e)(6)~~] and §3.4505 of this chapter [~~title~~] (relating to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves) are applicable, except as provided in §§3.9601 - 3.9606 of this chapter (relating to Preneed Life Insurance Minimum Mortality Standards for Determining Reserve Liabilities and Nonforfeiture Values) for preneed life insurance policies and certificates.

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

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

Filed with the Office of the Secretary of State on October 20, 2008.

TRD-200805528

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: November 30, 2008

For further information, please call: (512) 463-6327



SUBCHAPTER OO. PRENEED LIFE INSURANCE MINIMUM MORTALITY STANDARDS FOR DETERMINING RESERVE LIABILITIES AND NONFORFEITURE VALUES

28 TAC §§3.9601 - 3.9606

STATUTORY AUTHORITY. The new sections are proposed under the Insurance Code §§425.058(c), 1105.055(h), and 36.001. Section 425.058(c) provides that for an ordinary life insurance policy issued on the standard basis, excluding any disability or accidental death benefits in the policy and to which Subchapter B, Chapter 1105, applies, the applicable mortality table is the Commissioners 1980 Standard Ordinary Mortality Table; at the insurer's option for one or more specified life insurance plans, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; or any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by commissioner rule for use in determining the minimum standard valuation for a policy to which this subdivision applies. Section 1105.055(h) provides that any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by rules adopted by the Commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors. Section 36.001 provides that

the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §425.058 and §1105.055.

§3.9601. *Purpose and Applicability.*

(a) The purpose of this subchapter is to establish the minimum mortality standards for reserves and nonforfeiture values for preneed life insurance policies or certificates, and to recognize, permit, and prescribe the use of the Ultimate 1980 CSO in determining the minimum standard of valuation of reserves and the minimum standard nonforfeiture values for preneed life insurance policies or certificates in accordance with §425.058(c) and §1105.055 of the Insurance Code and §3.4505(a) of this chapter (relating to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves).

(b) This subchapter applies to all preneed life insurance policies and certificates issued on or after January 1, 2009.

§3.9602. *Definitions.*

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

(1) 2001 CSO Mortality Table--Mortality tables, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the 2nd Quarter 2002 *Proceedings of the NAIC*. Unless the context indicates otherwise, the 2001 CSO Mortality Table includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-near-est-birthday and age-last-birthday bases of the mortality tables.

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

(3) NAIC--National Association of Insurance Commissioners.

(4) Prepaid funeral benefits--As defined in the Finance Code §154.002(9).

(5) Prepaid funeral benefits contract--A contract or agreement for prepaid funeral benefits subject to the requirements of the Finance Code Chapter 154.

(6) Preneed life insurance--A life insurance policy or certificate that is approved by the department, issued by an insurance company licensed by the department, issued in conjunction with an insurance-funded prepaid funeral benefits contract, and which, whether by assignment or otherwise, has the purpose of funding prepaid funeral benefits to be provided at the time of or immediately following the death of the insured. For purposes of this subchapter, the definition of preneed life insurance does not include an annuity contract or policy.

(7) Ultimate 1980 CSO--The Commissioners 1980 Standard Ordinary Mortality Table without 10-year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law approved in December 1983.

§3.9603. *Minimum Valuation Mortality Standards.*

Except as provided by §3.9606 of this subchapter (relating to Transitional Use of the 2001 CSO Mortality Table), the Ultimate 1980 CSO shall be the minimum mortality standard for determining reserve liabilities and nonforfeiture values for both male and female insureds for preneed life insurance policies issued on or after January 1, 2009.

§3.9604. Minimum Valuation Interest Rate Standards.

(a) The interest rates used in determining the minimum standard for valuation of preneed life insurance shall be the calendar year statutory valuation rates as defined in the Insurance Code Chapter 425 Subchapter B (Standard Valuation Law).

(b) The interest rates used in determining the minimum standard for nonforfeiture values for preneed life insurance shall be the calendar year statutory nonforfeiture interest rates as defined in the Insurance Code Chapter 1105 (Standard Nonforfeiture Law for Life Insurance).

§3.9605. Minimum Valuation Method Standards.

(a) The method used in determining the standard for the minimum valuation of reserves for preneed life insurance shall be the method defined in the Insurance Code Chapter 425 Subchapter B (Standard Valuation Law).

(b) The method used in determining the standard for the minimum nonforfeiture values for preneed life insurance shall be the method defined in the Insurance Code Chapter 1105 (Standard Nonforfeiture Law for Life Insurance).

§3.9606. Transitional Use of the 2001 CSO Mortality Table.

(a) For preneed life insurance policies or certificates issued on or after January 1, 2009, and before January 1, 2012, the 2001 CSO Mortality Table may be used as the minimum standard for reserves and minimum standard for nonforfeiture benefits for both male and female insureds in accordance with the requirements of §§3.9101 - 3.9106 of this chapter (relating to 2001 CSO Mortality Table).

(b) If a company elects to use the 2001 CSO Mortality Table as a minimum standard for any preneed life insurance policy or certificate issued on or after the effective date of this subsection and before January 1, 2012, the company shall provide, as a part of the actuarial opinion memorandum submitted in support of the company's asset adequacy analysis, an annual written notification to the domiciliary commissioner. The notification shall include:

(1) a complete list of all preneed life insurance policy and certificate forms that use the 2001 CSO Mortality Table as a minimum standard;

(2) a certification signed by the appointed actuary stating that the reserve methodology, employed by the company in determining reserves for the preneed life insurance policies or certificates issued after the effective date of this subchapter and using the 2001 CSO Mortality Table as a minimum standard, develops adequate reserves (for the purposes of this certification, the preneed life insurance policies or certificates using the 2001 CSO Mortality Table as a minimum standard cannot be aggregated with any other policies); and

(3) supporting information regarding the adequacy of reserves for preneed life insurance policies or certificates issued after the effective date of this subchapter and using the 2001 CSO Mortality Table as a minimum standard for reserves.

(c) Preneed life insurance policies or certificates issued on or after January 1, 2012, must use the Ultimate 1980 CSO in the calculation of minimum nonforfeiture values and minimum reserves.

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

Filed with the Office of the Secretary of State on October 20, 2008.

TRD-200805527

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: November 30, 2008

For further information, please call: (512) 463-6327



TITLE 34. PUBLIC FINANCE

PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

CHAPTER 113. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM QUALIFIED REPLACEMENT BENEFIT ARRANGEMENT

34 TAC §113.4

The Texas County and District Retirement System proposes an amendment to §113.4, concerning the method and manner of segregating payments due a Benefit Recipient participating in the TCDRS Qualified Replacement Benefit Program. The proposed amendment provides that a subdivision participating in the program will segregate from its monthly employer contribution for direct payment to, or on behalf of, the Benefit Recipient the gross amount determined by the system as required under the program; and for direct payment to the retirement system of any amounts required to reimburse the system for costs of administering the program. The rule as it currently reads requires the subdivision to remit to the system its entire employer contribution for the month, with the system segregating such required amounts and returning to the subdivision, for direct payment to, or on behalf of, the Benefit Recipient the amount necessary to satisfy its obligation due the recipient under the program. The proposed amendment makes no changes to benefits under the program.

Brad Goodsell, General Counsel of the Texas County and District Retirement System, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Goodsell has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of administering the rule will be the elimination of unnecessary administrative steps in the process and simplification of procedures for subdivisions participating in the program. There will be no costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted to Brad Goodsell, General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, Texas 78768-2034.

The rule is proposed under the Government Code, §845.505, which authorizes the board of trustees of the Texas County and District Retirement System by rule to establish an excess benefit program and to provide for the transfer of contributions with respect to that program; and §845.102, which provides the board

of trustees with the authority to adopt rules necessary or desirable for efficient administration of the system.

The Government Code, §845.505 is affected by this proposed rule.

§113.4. Administration.

(a) Administrator. TCDRS shall be the Administrator of the Arrangement and shall be responsible for the supervision and control of the operation and administration of the Arrangement, except as otherwise provided herein. Subject to the authority of the Board, TCDRS shall have the exclusive right and full discretion to construe and interpret the Arrangement, to establish rules and procedures for its operation and administration, and to decide any and all questions of fact, actuarial valuation, interpretation, definition or administration arising under or in connection with the administration of the Arrangement. The interpretation and construction of any provisions of the Arrangement by the Administrator and its exercise of any discretion granted under the Arrangement shall be binding and conclusive on all persons who at any time have or claim to have any interest whatever under this Arrangement.

(b) Contributions and Payments.

(1) As soon as administratively feasible and before ~~[following]~~ the receipt of Employer contributions, TCDRS shall calculate [segregate from each Employer's contributions] the portion of the Employer's contributions necessary to make the payments due to Participants [Benefit Recipients] of that Employer for the next payment period and for any applicable expenses under this Arrangement. Before depositing its contributions with TCDRS, the Employer shall deduct the calculated amounts and make payments directly to its Participants; and directly to TCDRS for any applicable expenses under the Arrangement. Notwithstanding the foregoing, if TCDRS determines, in its sole discretion, that the allocation of contributions to the Arrangement would jeopardize the actuarial soundness of the Retirement Plan of the Employer, TCDRS shall ~~terminate [cease to segregate contributions for] the Arrangement and shall notify the participating Employer and Participants [affected Benefit Recipients].~~

(2) Amounts deducted [Contributions segregated] for payments and expenses under the Arrangement shall be separately accounted for and shall be used exclusively for payments and expenses under the Arrangement [and shall not be commingled with any other assets of TCDRS].

~~[(3) Within a reasonable period of time before each payment date, TCDRS shall distribute to each participating Employer the gross amount necessary, as determined by TCDRS, to satisfy such Employer's liability for amounts due on such payment date under the Arrangement].~~

(3) ~~[(4)]~~ The Employer from whom the Eligible Member retired or died while a Member with respect to such Employer shall be solely responsible for paying any amounts ~~[received from TCDRS and] due to the Participant under the terms of the Arrangement.~~ TCDRS shall have no obligation to pay any amounts due under the terms of the Arrangement.

(4) ~~[(5)]~~ The Employer shall be responsible for satisfying all tax withholding, payroll tax payments, other applicable tax payments and reporting requirements applicable to the Arrangement, if any, and shall be responsible for administering all payments due under the Arrangement.

(c) Plan Unfunded. This Arrangement shall at all times be entirely unfunded within the meaning of the federal tax laws. Nothing contained herein shall be construed as providing for assets to be held in trust for the Participants. No Participant or any other person shall have

any interest in any assets of TCDRS or any Employer by reason of the right to receive a payment under the Arrangement. Nothing contained herein shall be construed as a guarantee by TCDRS, any Employer, or any other entity or person that the assets of the Employer will be sufficient to pay any benefit hereunder.

(d) Appeal Procedure. In the event a dispute arises between the Employer and the Administrator relating to the determination of the Administrator or the interpretation, operation or administration of this Arrangement, the Administrator's decision shall be final, conclusive and binding unless the Employer submits an appeal directly to the Board within 20 days from the date of notice of the decision, for consideration and action in accordance with the administrative review procedures set forth in 34 TAC §§101.19 - 101.23. The action of the Board, taken on its own motion or as the result of an appeal, is final, conclusive, and binding.

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

Filed with the Office of the Secretary of State on October 20, 2008.

TRD-200805526

Brad Goodsell

General Counsel

Texas County and District Retirement System

Earliest possible date of adoption: November 30, 2008

For further information, please call: (512) 637-3230



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 35. PRIVATE SECURITY SUBCHAPTER I. COMMISSIONED SECURITY OFFICERS

37 TAC §35.143

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

The Texas Department of Public Safety proposes the repeal of §35.143, concerning Drug Testing Required for Commissioned Security Officers. The Board wishes to repeal the drug screening requirement for commissioned guards and to replace this requirement with a simpler, more easily applied and enforced standard applicable to all regulated industries. Repeal of the section is filed simultaneously with a proposal for new §35.143 which will simplify the administrative requirements placed on licensees relating to monitoring or controlling employee drug use.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be greater consistency in enforcement of the rule, a safer work environment for the regulated community, and safer and higher quality security services.

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

The department has determined that Chapter 2007 of the Government Code does not apply to this repeal. Accordingly, the department is not required to complete a takings impact assessment regarding this repeal.

Comments on the repeal may be submitted to Steve Moninger, Legal Staff, Regulatory Licensing Service - Private Security Bureau, Texas Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-0242, (512) 424-5842.

The repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(b) are affected by this repeal.

§35.143. *Drug Testing Required for Commissioned Security Officers.* This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 15, 2008.

TRD-200805447

Stanley E. Clark

Director

Texas Department of Public Safety

Earliest possible date of adoption: November 30, 2008

For further information, please call: (512) 424-2135



37 TAC §35.143

The Texas Department of Public Safety proposes new §35.143, concerning Drug-Free Workplace Policy Requirement. New §35.143 is intended to simplify the administrative requirements placed on licensees relating to monitoring or controlling em-

ployee drug use and is filed simultaneously with the repeal of current §35.143.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect, there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There are no anticipated economic costs to persons who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Mr. Ybarra has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be greater consistency in enforcement of the rule, a safer work environment for the regulated community, and safer and higher quality security services.

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

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposal may be submitted to Steve Moninger, Legal Staff, Regulatory Licensing Service - Private Security Bureau, Texas Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-0242, (512) 424-5842.

The new rule is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(b) are affected by this proposal.

§35.143. *Drug-Free Workplace Policy Requirement.*

(a) In the interest of creating a safe and drug-free work environment for the clients and employees of the security professions regulated by the Act, all licensed companies shall establish and implement a drug-free workplace policy consistent with the Texas Workforce Commission's "Drug-Free Workplace Policy."

(b) A copy of the Texas Workforce Commission's "Employee Consent to Drug and/or Alcohol Testing" or a substantially similar form reflecting the company's drug-free workplace policy shall be signed by each regulated employee and kept in each regulated employee's file.

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

Filed with the Office of the Secretary of State on October 15, 2008.

TRD-200805446

Stanley E. Clark

Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135



PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 211. ADMINISTRATION

37 TAC §211.29

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code by amending §211.29, concerning Responsibilities of Agency Chief Administrators. Subsection (e) is amended to clarify the requirements for changing a licensee's file. Subsections (d) and (i) are amended to delete two terms: "working" and "business". This is necessary to clear up any confusion that could result from those terms. Subsection (k) is amended to ensure that chief administrators notify the Commission of any change of the agency's name, address, phone number, or electronic mail address so that proper contact can be made. Subsection (l) is added to reflect the effective date of the changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public and licensees by ensuring that the Commission has up-to-date information regarding each agency that it serves.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, Texas 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code §1701.153, Reports from Agencies and Schools.

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

§211.29. *Responsibilities of Agency Chief Administrators.*

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

(d) An agency shall notify the commission, electronically or in writing, within 30 ~~working~~ days, when it receives information that a person under appointment with that agency has been arrested, charged, indicted, or convicted for any offense above a Class C misdemeanor, or for any Class C misdemeanor involving the duties and responsibilities of office or family violence.

(e) Except in the case of a commission error, an agency that wishes to report a change to any information within commission files about a licensee shall do so in a request to the commission, containing:

(1) the licensee's name, date of birth, last four digits of the social security number, or PID;

~~{(1) the licensee's name and social security number
TCLEOSE or PID number.}~~

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

(f) - (h) (No change.)

(i) An individual who is appointed or elected to the position of the chief administrator of a law enforcement agency shall notify the Commission of the date of appointment and title, through a form prescribed by the Commission within 30 ~~business~~ days of such appointment.

(j) (No change.)

(k) An agency chief administrator must report to the commission within 30 days, any change in the agency's name, physical location, mailing address, electronic mail address, or telephone number.

~~{(k) The effective date of this section is March 1, 2008.}~~

(l) The effective date of this section is January 1, 2009.

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

Filed with the Office of the Secretary of State on October 17, 2008.

TRD-200805479

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: November 30, 2008

For further information, please call: (512) 936-7713



CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

37 TAC §215.3

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code by amending §215.3, concerning Academy Licensing. Subsection (b)(8) will be amended to replace the social security number with personal identification number (PID) and clarifying the academy staff requirement. A new subsection (c)(1) is added to match the training coordinator requirements of other types of training providers, and the subse-

quent items are renumbered. Subsection (c)(8) is amended to match the definition of a law enforcement automobile for training. Subsection (i)(1) is amended to clarify the reasons an academy license may be revoked. Subsection (k) is amended to reflect the effective date of these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there may be an effect on state or local governments as a result of administering this section. The cost may derive from; conducting a training course, the tuition of the training course and in time spent in training.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by; eliminating the requirement to provide social security numbers, ensuring consistent use of terms throughout the rules, and clarification of academy license revocation.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there may be a benefit to small business by a demand for the training course.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there may be a cost to individuals as a result of the tuition of the training course and in time spent in training.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, Texas 78723.

The amendment is proposed under Texas Occupations Code Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code §1701.251, Training Programs; Instructors.

The rule amendment as proposed is in compliance with Texas Occupations Code §1701.254, Risk Assessment And Inspections.

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

§215.3. Academy Licensing.

(a) (No change.)

(b) If the commission determines that the training needs assessment justifies an additional academy in the area, and before an academy license may be issued, the proposed academy must pass an inspection of its facilities and instructional materials and must submit for commission approval:

(1) - (7) (No change.)

(8) the name, PID, ~~[social security number]~~ and resume of the proposed training coordinator, and any academy staff instructors, and a list of instructors who are scheduled to teach the submitted proposed course schedule];

(9) - (12) (No change.)

(c) The pre-licensing inspection of the academy's facilities and instructional materials shall be conducted by commission staff, or by a team of academy coordinators as appointed by the executive director. An academy must have and maintain:

(1) a qualified training coordinator;

(2) ~~[(4)]~~ a dedicated classroom that is sufficiently air-conditioned and heated, well lit, free of noise and other unreasonable distractions, and of sufficient size for the number of students to be served;

(3) ~~[(2)]~~ instructors and adequate instructional resources to conduct effective training;

(4) ~~[(3)]~~ adequate and convenient restrooms, breakroom, and parking area;

(5) ~~[(4)]~~ adequate and convenient law enforcement reference library for student and staff use;

(6) ~~[(5)]~~ a proprietary interest in, or a written contract providing for a firing range suitable for the course of fire required in the current basic peace officer course with safety rules clearly posted, adequate restrooms, secure storage and first aid equipment while on the premises;

(7) ~~[(6)]~~ a proprietary interest in, or a written contract providing for at least one driving range designated for criminal justice training. Each academy must have at least one law enforcement automobile for training; ~~[automobile available for criminal justice driving training];~~ and

(8) ~~[(7)]~~ sufficient access to current and appropriate teaching tools and electronic equipment, including video players and projection equipment, computer hardware, software, and Internet access.

(d) - (h) (No change.)

(i) The commission may revoke an academy license if:

(1) the academy has been classified as at risk for a 12-month period without complying with commission rules; ~~[substantial improvement];~~

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

(j) (No change.)

(k) The effective date of this section is January 1, 2009. ~~[June 1, 2004.]~~

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

Filed with the Office of the Secretary of State on October 17, 2008.

TRD-200805481

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: November 30, 2008

For further information, please call: (512) 936-7713



CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code by amending §217.1, concerning Minimum Standards for Initial Licensure. Subsection (a)(2)

is amended to eliminate the term armed from public security officers in order to be consistent with the definition in §1701.001 of the Texas Occupations Code. Subsection (a)(5) is amended to reflect the conviction prohibitions found in §215.15(a)(2)(A). This amendment will coordinate the enrollment and the licensure prohibitions. Subsection (a)(12)(B) is amended to reflect changes in the Psychologists' Licensing Act, Chapter 501 of the Texas Occupations Code. Subsection (g)(4) is amended to be consistent with other language concerning the validity of an endorsement. Subsection (j) is amended to reflect the general provisions for Constables, §86.0021 of the Texas Local Government Code. Subsection (o) is amended to reflect the effective date of these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that all rules referring to this term are consistent.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, Texas 78723.

The amendment is proposed under Texas Occupations Code Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code §1701.001, Definitions.

The rule amendment as proposed is in compliance with Texas Occupations Code §1701.255, Enrollment Qualifications.

The rule amendment as proposed is in compliance with Texas Occupations Code §1701.312, Disqualification: Felony Conviction or Placement on Community Supervision.

The rule amendment as proposed is in compliance with Texas Occupations Code §1701.313, Disqualification: Conviction of Barratry.

The rule amendment as proposed is in compliance with Texas Occupations Code §1701.306, Psychological and Physical Examination.

The rule amendment as proposed is in compliance with Texas Occupations Code §501.004, Applicability.

The rule amendment as proposed is in compliance with Texas Occupations Code §1701.304, Examination.

The rule amendment as proposed is in compliance with Texas Occupations Code §1701.003, Application of Chapter.

The rule amendment as proposed is in compliance with Texas Local Government Code §86.0021, Qualifications; Removal.

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

§217.1. *Minimum Standards for Initial Licensure.*

(a) The commission shall issue a peace officer, jailer, temporary jailer, or public security officer license to an applicant who meets the following standards:

(1) (No change.)

(2) for peace officers and public security officers [~~armed public security officers~~], is 21 years of age, or 18 years of age if the applicant has received an associate's degree or 60 semester hours of credit from an accredited college or university or has received an honorable discharge from the armed forces of the United States after at least two years of active service; for jailers is 18 years of age;

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

(5) is not currently charged with any criminal offense for which conviction would be a bar to licensure;

~~{(5) is not currently under indictment for any criminal offense;}~~

(6) - (11) (No change.)

(12) has been examined by a psychologist, selected by the appointing or employing agency, who is licensed by the Texas State Board of Examiners of Psychologists. The psychologist must be familiar with the duties appropriate to the type of license sought and appointment to be made. This examination may also be conducted by a psychiatrist. The appointee must be declared in writing by that professional to be in satisfactory psychological and emotional health to serve as the type of officer for which the license is sought within 180 days before the date of appointment by the agency. The examination must be conducted pursuant to professionally recognized standards and methods:

(A) (No change.)

(B) the examination may be conducted by qualified persons identified by §501.004, Texas Occupations Code. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; and

~~{(B) the examination may be conducted by a qualified psychologist exempt from licensure by the Psychologist Certification and Licensing Act, Section 22, who is recognized under exceptional circumstances; and}~~

(C) (No change.)

(13) - (18) (No change.)

(b) - (f) (No change.)

(g) A person must successfully complete the minimum training required for the license sought:

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

(4) passing any examination required for the license sought while the endorsement remains valid, and [~~prior to the expiration of the endorsement, and~~]

(5) (No change.)

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

(j) [~~A constable who first took office on or after January 1, 1985, must be licensed by the commission not later than two years after taking office.~~] A constable taking office after August 30, 1999, must be licensed by the commission not later than 270 days after taking office.

(k) The commission may issue a provisional license, consistent with Texas Occupations Code §1701.311, to an agency for a person

to be appointed by that agency. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a provisional license.

(l) - (n) (No change.)

(o) The effective date of this section is January 1, 2009. [~~September 1, 2007~~]

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

Filed with the Office of the Secretary of State on October 17, 2008.

TRD-200805483

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: November 30, 2008

For further information, please call: (512) 936-7713



37 TAC §217.9

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code by amending §217.9, Continuing Education Credit for Licensees. Subsection (b)(7) is deleted to apply a single standard to all types of training providers.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by applying one standard for all training providers.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, Texas 78723.

The amendment is proposed under Texas Occupations Code Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment is proposed under Texas Occupations Code §1701.352, Continuing Education Programs.

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

§217.9. *Continuing Education Credit for Licensees.*

(a) (No change.)

(b) The commission may refuse credit for:

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

~~[(7) courses taken two or more times on the Peace Officer System for Education and Internet Training (POSEIT) system within one training unit.]~~

(7) ~~[(8)]~~ courses provided by the same training provider and taken more than two times within one training unit.

(c) (No change.)

(d) The effective date of this section is January 1, 2009. [~~June 1, 2006~~]

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

Filed with the Office of the Secretary of State on October 17, 2008.

TRD-200805505

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: November 30, 2008

For further information, please call: (512) 936-7713



37 TAC §217.11

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code by amending §217.11, Legislatively Required Continuing Education for Licensees. Subsection (a) is amended to reflect the 40-hour training requirement for peace officers in Occupations Code §1701.351(a). Subsection (b) is amended to reflect the 48-month training requirement in §1701.352(b) and §1701.352(e). Subsection (k) is amended to allow for the different training requirements assigned to each license. Subsection (o) is amended to reflect the effective date of these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying the rule to match the current Texas Occupations Code.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, Texas 78723.

The amendment is proposed under Texas Occupations Code Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority.

The rule amendment as proposed is in compliance with Texas Occupations Code §1701.351, Continuing Education Required For Peace Officers.

The rule amendment as proposed is in compliance with Texas Occupations Code §1701.352, Continuing Education Programs.

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

§217.11. Legislatively Required Continuing Education for Licensees.

(a) Individuals appointed as peace officers shall complete at least 40 hours of continuing education training every 24 month unit of a training cycle.

~~{(a) Each agency that appoints or employs peace officers, reserve law enforcement officers, jailers, or public security officers shall provide each peace officer, reserve law enforcement officer, jailer, or public security officer it appoints or employs a continuing education program at least once every 24 month unit of a training cycle.}~~

(b) Each agency that appoints or employs peace officers, reserve law enforcement officers, jailers, or public security officers shall provide each peace officer, reserve law enforcement officer, jailer, or public security officer it appoints or employs a continuing education program at least once every 48 month training cycle. This rule does not limit the number of hours of continuing education an agency may provide to each peace officer, reserve law enforcement officer, jailer, or public security officer it appoints or employs.

~~{(b) The legislatively required continuing education program for individuals licensed as peace officers shall consist of 40 hours of training every 24 month unit of a training cycle. This rule does not limit the number of hours of continuing education an agency may provide to each peace officer, reserve law enforcement officer, jailer, or public security officer it appoints or employs.}~~

(c) - (j) (No change.)

(k) The commission may take action against a licensee for failure to complete the appropriate training ~~[required training in either or both of the 24 month units]~~ within a training cycle.

(l) - (n) (No change.)

(o) The effective date of this section is January 1, 2009. ~~[March 1, 2008.]~~

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

Filed with the Office of the Secretary of State on October 17, 2008.

TRD-200805506

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: November 30, 2008

For further information, please call: (512) 936-7713



37 TAC §217.15

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code by amending §217.15, concerning Waiver of Legislatively Required Continuing Education. Subsection (c) is amended to clarify the waiver is for mitigating cir-

cumstances and to change from expiration of a license to the end of the training unit. Subsection (d) is amended to reflect the changes to subsection (c). Subsection (e) is amended to clarify the timeframe for requesting a waiver for civil process training.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying the waiver requirements for legislatively required continuing education.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, Texas 78723.

The amendment is proposed under Texas Occupations Code Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code §1701.353, Continuing Education Procedures.

The rule amendment as proposed is in compliance with Texas Occupations Code §1701.354, Continuing Education For Deputy Constables.

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

§217.15. Waiver of Legislatively Required Continuing Education.

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

(c) A request for a waiver of the legislatively required continuing education due to mitigating circumstances ~~[under this section]~~ shall be in writing, accompanied by verifying documentation, and shall be submitted to the executive director with a copy to the chief administrator of the licensee's appointing agency not less than 30 days prior to the end of the training unit ~~[expiration of the license]~~.

(d) Absent mitigating ~~[exigent]~~ circumstances, a request for a waiver under this section shall be submitted to the executive director not less than 90 days prior to the end of the training unit ~~[expiration of the license]~~.

(e) The commission may waive the requirement for civil process training if not less than 90 days prior to the end of the training unit.

(1) the constable requests a waiver for the deputy constable based on a representation that the deputy constable's duty assignment does not involve civil process responsibilities, or

(2) the constable or deputy constable requests a waiver because of hardship and the commission determines that a hardship exists.

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

(h) The effective date of this section is January 1, 2009. ~~[March 1, 2008.]~~

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

Filed with the Office of the Secretary of State on October 17, 2008.

TRD-200805507

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: November 30, 2008

For further information, please call: (512) 936-7713



37 TAC §217.19

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code by amending §217.19, concerning Reactivation of a License. Subsection (e) is amended to clarify the reactivation process. Subsection (e)(5) is deleted for clarity. Subsection (e)(6) is amended to be consistent with other language concerning the validity of an endorsement. Subsection (f) is added to identify the requirements for retiree reactivation in accordance with Texas Occupations Code §1701.3161 and House Bill 1955. Subsection (g) is amended to reflect the effective date of these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying the requirements for retired peace officers.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, Texas 78723.

The amendment is proposed under Texas Occupations Code Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code §1701.316, Reactivation of Peace Officer License.

The rule amendment as proposed is in compliance with Texas Occupations Code §1701.3161, Reactivation of Peace Officer License: Retired Peace Officers.

The rule amendment as proposed is in compliance with Texas Occupations Code §1701.304, Examination.

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

§217.19. Reactivation of a License.

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

(e) In order to reactivate a license, an individual must: [~~Before individuals may be appointed they must:~~]

(1) meet the current licensing standards, with successful completion of a basic licensing course current at the time of initial licensure; fulfilling this requirement;

(2) successfully complete the legislatively required continuing education for the current training unit;

(3) make application and submit any required fee(s) for an endorsement in the format currently prescribed by the commission;

(4) obtain an endorsement, issued by the commission, giving the individual eligibility to take the required licensing examination;

~~[(5) meet the requirements of §217.3 of this chapter]; and~~

(5) ~~[(6)]~~ pass the licensing examination for the license to be reactivated. After three failures, ~~[or if the endorsement expires,]~~ the individual must re-qualify by repeating the entire training course for the license sought.

(f) In order for a retired peace officer to reactivate a license, a retiree must:

(1) meet the current licensing standards, with successful completion of a basic licensing course current at the time of initial licensure; fulfilling this requirement;

(2) successfully complete the legislatively required continuing education for the current training unit; and

(3) make application and submit any required fee(s) for retired reactivation in the format currently prescribed by the commission.

(g) [(f)] The effective date of this section is January 1, 2009. [~~June 1, 2006.~~]

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

Filed with the Office of the Secretary of State on October 17, 2008.

TRD-200805508

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: November 30, 2008

For further information, please call: (512) 936-7713



CHAPTER 221. PROFICIENCY CERTIFICATES AND OTHER POST-BASIC LICENSES

37 TAC §221.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code by amending §221.1, concerning Proficiency Certificate Requirements. Subsection (a)(2) is amended to include Retired Peace Officer Firearms Proficiency certificate. Subsection (a)(2) is further amended to remove Homeowners Insurance Inspector Proficiency as §5.33A was

repealed from the Texas Insurance Code. Subsection (f) is amended to reflect the effective date of these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years that the section as proposed will be in effect, there will be a positive benefit to the public by repealing a certificate that is no longer supported by statute.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, Texas 78723.

The amendment is proposed under Texas Occupations Code Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code §1701.402, Proficiency Certificates.

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

§221.1. Proficiency Certificate Requirements.

(a) To qualify for proficiency certificates, applicants must meet all the following proficiency requirements:

(1) (No change.)

(2) have an active license or appointment for the corresponding certificate (not a requirement for Mental Health Officer Proficiency, ~~Retired Peace Officer Firearms Proficiency~~, [~~Homeowners Insurance Inspector Proficiency~~], Firearms Instructor Proficiency, Firearms Proficiency for Community Supervision Officers, or Instructor Proficiency);

(3) - (5) (No change.)

(b) - (e) (No change.)

(f) The effective date of this section is January 1, 2009. [~~March 1, 2008~~]

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

Filed with the Office of the Secretary of State on October 17, 2008.

TRD-200805509

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: November 30, 2008

For further information, please call: (512) 936-7713



37 TAC §221.17

(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 Law Enforcement Officer Standards and Education or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes to repeal Title 37, Texas Administrative Code, §221.17, concerning Homeowners Insurance Inspector Proficiency. The authority for that certificate, §5.33A, was repealed from the Texas Insurance Code. The effective date of this repeal will be January 1, 2009.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by matching the rules with current Texas Insurance Code.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed repeal.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, Texas 78723.

The repeal is proposed under Texas Occupations Code §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule repeal as proposed is in compliance with Texas Occupations Code §1701.402, Proficiency Certificates.

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

§221.17. Homeowners Insurance Inspector Proficiency.

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

Filed with the Office of the Secretary of State on October 17, 2008.

TRD-200805510

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: November 30, 2008

For further information, please call: (512) 936-7713



CHAPTER 223. ENFORCEMENT

37 TAC §223.17

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code by amending §223.17, concerning Reinstatement of a License. Subsection (b)(3) is amended

by changing "endorsement of eligibility" to "endorsement" to be consistent with other rules. Subsection (c) is amended to reflect the effective date of this change.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that all rules referring to endorsements will be consistent.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, Texas 78723.

The amendment is proposed under Texas Occupations Code Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code §1701.501, Disciplinary Action.

The rule amendment as proposed is in compliance with Texas Occupations Code §1701.502, Felony Conviction or Placement on Community Supervision.

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

§223.17. *Reinstatement of a License.*

(a) (No change.)

(b) If the suspension results in a break in service of over two years, then the reinstatement procedure includes the following requirements for attempting the licensing exam:

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

(3) upon approval of the application, the commission will issue the holder of a suspended license an endorsement [of eligibility] to take the required licensing examination. If failed three times, the applicant may not be issued another endorsement [of eligibility] until successful completion of the current licensure course.

(c) The effective date of this section is January 1, 2009. [~~March 1, 2008.~~]

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

Filed with the Office of the Secretary of State on October 17, 2008.

TRD-200805511
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: November 30, 2008
For further information, please call: (512) 936-7713



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 7. BANKING AND SECURITIES

PART 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 77. LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS

SUBCHAPTER A. AUTHORIZED LOANS AND INVESTMENTS

7 TAC §77.1

The Finance Commission of Texas withdraws the proposed amendment to §77.1 which appeared in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6661).

Filed with the Office of the Secretary of State on October 17, 2008.

TRD-200805512
Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
Effective date: October 17, 2008
For further information, please call: (512) 475-1350



TITLE 10. COMMUNITY DEVELOPMENT

PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

CHAPTER 257. BOARD FOR OFFICE OF RURAL COMMUNITY AFFAIRS

SUBCHAPTER D. TEXAS RURAL PHYSICIAN ASSISTANT LOAN REIMBURSEMENT PROGRAM

10 TAC §257.109

The Office of Rural Community Affairs withdraws the proposed amendment to §257.109 which appeared in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6258).

Filed with the Office of the Secretary of State on October 17, 2008.

TRD-200805480
Charles S. (Charlie) Stone
Executive Director
Office of Rural Community Affairs
Effective date: October 17, 2008
For further information, please call: (512) 936-6726



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 187. PROCEDURAL RULES

SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

22 TAC §187.18

The Texas Medical Board withdraws the proposed amendment to §187.18 which appeared in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7959).

Filed with the Office of the Secretary of State on October 17, 2008.

TRD-200805467
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Effective date: October 17, 2008
For further information, please call: (512) 305-7016



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

1 TAC §22.33

The Texas Ethics Commission adopts new §22.33, relating to how political expenditures are attributable for purposes of the expenditure limits set by the Judicial Campaign Fairness Act (JCFA). The new rule is adopted without changes to the proposed text as published in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7383) and will not be republished.

The JCFA provides for voluntary political expenditure limits applicable to certain judges and certain judicial candidates. The limits apply to "each election in which the candidate is involved." However, the statute does not provide a method for attributing the expenditure to a particular election. Section 22.33 provides that an officeholder expenditure is attributed to the next election in which the officeholder is a candidate, and a campaign expenditure is attributed to the election for which the expenditure is made.

No comments were received regarding the proposed rule during the comment period.

The new §22.33 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

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

Filed with the Office of the Secretary of State on October 15, 2008.

TRD-200805453

Natalia Luna Ashley

General Counsel

Texas Ethics Commission

Effective date: November 4, 2008

Proposal publication date: September 5, 2008

For further information, please call: (512) 463-5800



TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER P. DIAPREPES ROOT WEEVIL QUARANTINE

4 TAC §19.163

The Texas Department of Agriculture (the department) adopts an amendment to §19.163, concerning quarantine implementation for the Diaprepes root weevil, *Diaprepes abbreviatus* (L), without changes to the proposal published in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7383).

The adopted amendment imposes no new requirements, but specifies existing requirements for entry of a quarantined article from a quarantined area outside Texas. These requirements titled Diaprepes Root Weevil Action Plan, are posted on the department's website under Pest and Disease Alerts, and the Florida Department of Agriculture and Consumer Services uses these guidelines to certify the quarantined articles for shipment to Texas. However, some Florida nurserymen mentioned they were unaware of the guidelines and asked the department to include these guidelines in the quarantine so that quarantined articles could be treated in a timely manner and a shipment delay avoided. The amendment specifies treatment requirements and restrictions for the field-grown and container-grown quarantined articles and provides an authorized representative of the state of origin with the option of certifying a shipment using a phytosanitary certificate or a phytosanitary permit. The amendment also clarifies that treatment for the Diaprepes root weevil is a prerequisite for issuance of a phytosanitary document. The adopted amendment does not add any new entry requirements for the quarantined articles. It summarizes the guidelines already in use and directs a nursery or a shipper to contact the state of origin authority for certification, and provided immediate access to the information required for shipping quarantined articles from the quarantined area.

No comments were received on the proposal.

The amendment is adopted under the Texas Agriculture Code, §71.001, which authorizes the department to establish quarantines against out-of-state diseases and pests; §71.002, which authorizes the department to establish quarantines against in-state diseases and pests; §71.003, which authorizes the department to establish quarantines around pest-free areas; and §71.005, which authorizes the department to prevent the movement of quarantined articles or to establish safeguards that allow the movement of such articles.

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

Filed with the Office of the Secretary of State on October 14, 2008.

TRD-200805441

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: November 3, 2008

Proposal publication date: September 5, 2008

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



TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 15. CORPORATE ACTIVITIES

SUBCHAPTER C. BANK OFFICES

7 TAC §15.44

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts new §15.44, concerning the Establishment and Operation of a Center of Monetary Education for Texans (COMET) without changes to the proposed text as published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6658). The text will not be republished.

The new rule facilitates the establishment of bank offices in schools so that students and other members of the school community may improve their financial literacy. A new rule is needed to minimize the administrative requirements for opening a bank office in a school.

New §15.44 allows state banks to participate in a financial education program at a school and, at the school's discretion, provide services including receiving deposits, paying withdrawals, and lending money. Under current law, a state bank cannot pay withdrawals or lend money from a school bank office unless it obtains approval from the department to open a branch.

The Legislature has recognized the need for Texas residents to become more financially literate. In 2005, it passed House Bill (HB) 492, which requires instruction in personal financial literacy in one or more courses for high school graduation. In 2007, the Legislature passed HB 2007, which requires the department to seek to improve the financial literacy and education of Texans and to encourage access to mainstream financial products by persons who have not previously participated in the conventional finance system (the unbanked). Two of the methods authorized by the Legislature are: (1) to encourage and aid banks in the development and promotion of financial literacy and education programs and community outreach, and (2) to promote replication of best practices and exemplary programs that foster financial literacy and education.

State banks previously faced administrative hurdles in opening school bank offices that credit unions and national banks did not face. Credit unions are free to open bank offices in school with-

out prior regulatory approval. The Office of the Comptroller of the Currency (OCC), which regulates national banks, passed a rule in 2001 which allows a national bank to open an office in a school without the bank office's becoming a branch if the principal purpose for the office is educational. See 12 CFR 7.1021. The Federal Deposit Insurance Corporation (FDIC), which normally requires state banks to file branch applications, passed a very similar rule effective June 23, 2008. Now that the branch application requirement has been entirely removed at the federal level for school financial education programs, new §15.44 makes the department's process for establishment of bank offices in schools consistent with federal rules.

The department receives inquiries from banks desiring to offer financial education programs in schools that would include the provision of banking services. Previously, the banks have been able to offer only limited services without applying for a branch. New §15.44 allows a school and a bank to partner in development of a more extensive program that would provide greater financial education without the creation of a bank branch. For example, in a high school, a bank employee could be on site managing and overseeing student tellers. These students would be trained in bank operations. Services could include opening deposit accounts, paying withdrawals, or making loans. The department expects that such services would be limited in nature; available only to students, parents, and faculty of the sponsoring school; and accessible on a part-time basis or designated school days. A program providing these services can train the students in personal financial management, which contributes to their financial stability and that of their communities. Such a program will further the legislative goal of community outreach by providing services to the unbanked who have a relationship with the school.

New §15.44 requires any state bank that plans to open a COMET to give the department 30 days written notice before operations commence. The new rule also mandates that the services are to be provided at the discretion of the school. The program must be conducted consistently with safe and sound banking practices and applicable law.

The department received three comments regarding the new rule. The Independent Bankers Association of Texas commented in support of the rule. The Division of Curriculum of the Texas Education Agency and the Texas State Securities Board (Securities Board) did not comment either for or against the adoption of the new rule, but voiced their concerns and suggestions. Summaries of the comments and commission responses follow:

The Independent Bankers Association of Texas commented that the new rule would clarify that in-school banking programs need not apply for branches, and that this parity with national banks will enhance the financial education of Texas school children.

The Division of Curriculum of the Texas Education Agency commented that it is required by law (HB 492, passed in 2005) to require instruction in personal financial literacy in high school and that it would be beneficial for the department to coordinate with the Texas Education Agency in implementing HB 492 so that the students' best interests are considered and that students are in the forefront in the planning and implement of COMETs. The commission agrees with this comment. New §15.44(b)(2) requires that the banking services of a COMET be provided at the discretion of the school. Therefore, the Texas Education Agency, in its oversight capacity, can coordinate with the schools regarding operations of COMETs. New §15.44 simply removes imped-

iments to state banks undertaking an activity that national banks and credit unions have already been participating in.

The Securities Board's comment made three separate points. First, the Securities Board found the proposed rule troubling because a bank operating a COMET would have "unfettered ability" to place commercial branding on signage and printed materials intended for financial education. The Securities Board believes this to be highly inappropriate because the purpose of financial education should be to educate, not to generate new customers for commercial business.

The commission disagrees. The new rule requires a COMET to have financial education as its principal purpose. 7 TAC §15.44(b)(3). Additionally, the Legislature's charge to the department, in HB 2007, includes encouraging access to mainstream financial products by persons who have not previously participated in the conventional finance system. Therefore, a bank's obtaining new customers through a COMET serves this legislative goal.

Banks and credit unions have already been participating in financial education activities in schools such as teaching financial literacy courses both on their own and by partnering with Junior Achievement. In conjunction with those activities, the financial institutions often supply educational materials which identify the financial institution. Indeed, national banks and credit unions have already established at least 20 school bank offices in Texas; and they all bear the bank or credit union's name. A COMET may, as suggested by the Securities Board, do business at the school under the school's name, such as "Travis High School Bank," but all account documentation will of necessity use the legal name of the bank. Additionally, all federally insured institutions are required to take steps to insure that their customers know exactly with what financial institution they are dealing. See FDIC Financial Institution Letter 46-98 (1998). Having the name of the bank sponsoring the COMET visible clarifies with whom the student and other customers are dealing. The department has written the new rule to impose no greater restrictions on a bank's operations of a COMET than the FDIC placed on banks in its recently adopted rule on in-school branches.

The Securities Board's second point is that, because a COMET's customers will include unsophisticated adolescents, a COMET should not be permitted to offer any services other than savings and checking accounts and simple loans. In particular, the Securities Board suggests a COMET should be prohibited from offering securities products. The commission disagrees with limiting what products a COMET may offer. The school has discretion in deciding which services are provided by a COMET. National banks, which have had school bank offices for some time, are not restricted with regard to bank products that can be offered in a school bank office. It is unlikely that a COMET would offer securities products; however, under the rule, the department still has all its regulatory tools available to protect against any unsafe practice, such as offering securities products to minors. Section 15.44(c) requires a bank to give the banking commissioner 30 days written notice before it begins providing services at a COMET. The notice must include a list of the specific activities to be performed at the COMET. Section 15.44(b)(4) requires that a COMET must be conducted in a manner consistent with safe and sound banking practices. If this requirement is not met, the department can prohibit the bank from going forward with the COMET.

The Securities Board's third point is that a COMET should have adequate security for its funds, personnel and customers. The

commission agrees. The bank, in coordination with the school, will determine how to provide security. All banks are required by federal law to adopt detailed security procedures. See, 12 Code of Federal Regulations (CFR) §§326.0 - 326.4 and 12 CFR §208.61. Additionally, Finance Code §§59.301 - 59.310 and 7 TAC §3.92 establish safety requirements for outside automatic teller machines (ATMs). Therefore, no change is needed to the new rule.

New §15.44 is adopted under Finance Code §12.1085, which requires the department to improve the financial literacy and education of persons in this state and to encourage access to mainstream financial products and services by the unbanked; under Finance Code §31.003(a), which provides that the Finance Commission may adopt rules to accomplish the purposes of this subtitle and Chapters 11, 12, and 13; under Finance Code §31.002(a)(8)(H), which excepts from the definition of "branch" another office or facility as provided by a rule adopted under Subtitle A of Title 3 of the Finance Code; and under Finance Code §32.201(b), which provides that the Finance Commission may adopt rules further defining functions of a state bank that are not required to be conducted at an approved location.

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

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A. Kaylene Ray
General Counsel

Texas Department of Banking

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For further information, please call: (512) 475-1300



PART 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 75. APPLICATIONS

The Finance Commission of Texas (the "Commission") adopts amendments to Subchapter A, §75.1, concerning the application for permission to organize a state savings bank, and §75.3, concerning publication of notice of charter application; Subchapter C, §75.32, concerning types of additional offices, §75.33, concerning branch office applications, and §75.41, concerning offices and remote service units in other states or territories; and, Subchapter E, §75.121, concerning change of control, in conjunction with the Commission's review of Chapter 75.

Sections 75.1, 75.3, 75.32, 75.33, 75.41, and 75.121 are adopted without changes to the text as published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6659), and will not be republished.

In general, the purpose of the amendments is to conform the rules to the Department's current practice, to eliminate obsolete provisions, and to add clarification. Section 75.1 has been revised to remove obsolete language and add clarification. Section 75.3 has been revised to provide clarification. Sections 75.32 and 75.33 add language to clarify a current practice. Section

75.41 has been revised to provide clarification and also to delete proposed repealed language. Section 75.121 has been revised to correct the Department's name.

The 30-day comment period ended September 22, 2008, during which no comments were received on the proposed rule amendments.

SUBCHAPTER A. CHARTER APPLICATIONS

7 TAC §75.1, §75.3

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

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

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

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Douglas B. Foster
Commissioner

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SUBCHAPTER C. ADDITIONAL OFFICES

7 TAC §§75.32, 75.33, 75.41

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

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

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

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SUBCHAPTER E. CHANGE OF CONTROL

7 TAC §75.121

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

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

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

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SUBCHAPTER C. ADDITIONAL OFFICES

7 TAC §75.37

The Finance Commission of Texas (the "Commission") adopts the repeal of Subchapter C, §75.37, concerning remote service units, in conjunction with the Commission's review of Chapter 75, without changes as published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6661).

The purpose of the repeal of this rule is to eliminate an obsolete procedure that is no longer used by any other similar banking regulatory agency.

The 30-day comment period ended September 22, 2008, during which no comments were received on the proposed rule amendments.

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

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

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

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CHAPTER 77. LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS

The Finance Commission of Texas (the "Commission") adopts amendments to Subchapter A, §77.31, concerning loan policies and documentation, §77.72, concerning liquidity, §77.74, concerning local service area investment requirement, and §77.94, concerning subsidiary operations; and Subchapter B, §77.115, concerning user safety at unmanned teller machines, in conjunction with the Commission's review of Chapter 77.

Section 77.74 is adopted with changes to the text as published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6661), and will be republished. Sections 77.31, 77.72, 77.94, and 77.115 are adopted without changes and will not be republished.

In general, the purpose of the amendments is to conform the rules to the Department's current practice, to eliminate obsolete provisions, and to add clarification. Sections 77.31, 77.72, 77.74, and 77.94 have been revised to clarify current practice. Section 77.115 has been revised to correct the Department's name.

The 30-day comment period ended September 22, 2008, during which we received various comments regarding the proposed rule amendments. A summary of the comments relating to the proposed amendments and the Department's responses follows.

Comment: The update to loan policies and general documentation in 7 TAC §77.31(a)(1) regarding the dating of the signature on a loan application was questioned regarding telephone applications.

Response: The Department notes that even in a telephone application, a signature must eventually be obtained, and can therefore then be dated.

Comment: The expansion of local service area investments to include local consumer installment loans received a comment regarding several aspects of the proposed amendment. The Department proposed adding a definition of local consumer installment loans to 7 TAC §77.1. The commenter suggested that the definition was not necessary due to the fact that those type of loans would already fall under existing definitions of personal property loans or unsecured loans. The proposed description of the added loan types as local consumer installment loans was suggested to be changed to consumer loans. The commenter suggested that the Department also add small business loans to the local service area investments of 7 TAC §77.74.

Response: The Department agrees that the definition is not needed in 7 TAC §77.1. Regarding the other comments, the Department has concluded that in order to conform to statute at *Finance Code* §94.201(6), the exact wording from that section of statute will be added to the rule at 7 TAC §77.74(a)(6). This responds to all of the comments and broadens the scope of local service area in the rule to the exact scope to which the statute was expanded in 2005.

SUBCHAPTER A. AUTHORIZED LOANS AND INVESTMENTS

7 TAC §§77.31, 77.72, 77.74, 77.94

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

The statutory provisions affected by the amendments are contained in Texas Finance Code, Chapters 94 and 95.

§77.74. *Local Service Area Investment Requirement.*

(a) A savings bank shall maintain an amount equal to at least 15% of its local service area deposits invested in the following categories of assets and investments:

- (1) first and second lien residential mortgage loans or foreclosed residential mortgage loans originated from within the savings bank's local service area;
- (2) home improvement loans;
- (3) interim residential construction loans;
- (4) mortgage-backed securities secured by loans from within the savings bank's local service area;
- (5) loans for community reinvestment purposes; and
- (6) other loans made to customers in the savings bank's local service area that meet the definition of qualified thrift assets under Section 92.204.

(b) The board of directors of each savings bank shall approve at least annually the definition of the institution's local service area which shall incorporate the primary area, or areas from which the institution receives savings deposits. At the time a savings bank is chartered or converts into a savings bank, a savings bank may seek approval from the commissioner of the definition of its local service area and unless otherwise agreed to by the institution and the commissioner, the savings bank may rely on this definition for the duration of its corporate existence as a savings bank.

(c) For purposes of identifying qualifying loans and investments under subsection (a) of this section.

(1) Mortgage-backed securities shall include mortgage-backed bonds, mortgage pass-through securities, collateralized mortgage obligations, and such other securities approved by the commissioner which are collateralized by first or second lien residential mortgages.

(2) It shall be the responsibility of each institution to provide such information and evidence necessary to identify particular mortgage-backed securities as being secured by loans from within the institution's local service area such as the originator, the originator/servicer or such other information as may identify the underlying loans as being from the institution's local service area.

(3) Loans and investments described in subsection (a) of this section may include first and second lien residential mortgage loans and home improvement loans or residential construction loans originated from within the institution's local service area and sold by the institution or any subsidiary (including finance subsidiaries) of the savings bank within the preceding 12 months.

(d) Upon application by a savings bank, the commissioner may grant a limited term waiver from the requirements of subsection (a) of this section. Such application must include information and evidence that quality loans in the categories described in subsection (a) of this section are not available from within the institution's local service area.

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

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Douglas B. Foster
Commissioner
Texas Department of Savings and Mortgage Lending
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SUBCHAPTER B. SAVINGS AND DEPOSITS

7 TAC §77.115

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

The statutory provisions affected by the amendments are contained in Texas Finance Code, Chapters 94 and 95.

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

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SUBCHAPTER A. AUTHORIZED LOANS AND INVESTMENTS

7 TAC §77.32

The Finance Commission of Texas (the "Commission") adopts the repeal of Subchapter A, §77.32, concerning restrictions on loan procurement fees, in conjunction with the Commission's review of Chapter 77, without changes as published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6663).

The purpose of the repeal of this rule is to eliminate an obsolete requirement.

The 30-day comment period ended September 22, 2008, during which no comments were received on the proposed repeal.

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

The statutory provisions affected by the repeal are contained in Texas Finance Code, Chapter 94.

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

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SUBCHAPTER B. SAVINGS AND DEPOSITS

7 TAC §§77.101 - 77.104, 77.106 - 77.113

The Finance Commission of Texas (the "Commission") adopts the repeal of Subchapter B, §77.101, concerning the distribution or payment of dividends or interest, §77.102, concerning account balance to which dividends or interest are applied, §77.103, concerning the method of computing dividends, §77.104, concerning advertisements or public representations of account earnings, §77.106, concerning provisions for distribution of earnings on other than regular accounts, §77.107, concerning notice prior to withdrawal, §77.108, concerning deposit accounts, §77.109, concerning NOW accounts, §77.110, concerning checking accounts, §77.111, concerning approval of the commissioner, §77.112, concerning noninterest-bearing deposit accounts, and §77.113, concerning overdraft protection--credit and debit cards, in conjunction with the Commission's review of Chapter 77, without changes as published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6663).

The purpose of the repeal of these rules is to eliminate obsolete requirements.

The 30-day comment period ended September 22, 2008, during which no comments were received on the proposed repeals.

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

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

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

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CHAPTER 79. MISCELLANEOUS

The Finance Commission of Texas (the "Commission") adopts amendments to Subchapter A, §79.4, concerning financial statements, annual reports, and audits, §79.7, concerning examinations; Subchapter E, §79.71, concerning hearings officer; and Subchapter H, §79.122, concerning consumer complaint proce-

dures, in conjunction with the Commission's review of Chapter 79.

Sections 79.4, 79.7, 79.71, and 79.122 are adopted without changes to the text as published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6664) and will not be republished.

In general, the purpose of the amendments is to conform the rules to the Department's current practice, to eliminate obsolete provisions, and to add clarification. Section 79.4 has been revised to remove the option of not having independent audits and to correct the numbering scheme. Section 79.7 has been revised for clarification. Section 79.71 and §79.122 have been revised to correct the Department's name and contact information.

The 30-day comment period ended September 22, 2008, during which no comments were received on the proposed rule amendments.

SUBCHAPTER A. BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS AND RESERVES

7 TAC §79.4, §79.7

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

The statutory provisions affected by the amendments are contained in Texas Finance Code, Chapters 11, 13, and 96.

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

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SUBCHAPTER E. HEARINGS

7 TAC §79.71

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

The statutory provisions affected by the amendments are contained in Texas Finance Code, Chapters 11, 13, and 96.

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

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SUBCHAPTER H. CONSUMER COMPLAINT PROCEDURES

7 TAC §79.122

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

The statutory provisions affected by the amendments are contained in Texas Finance Code, Chapters 11, 13, and 96.

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

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CHAPTER 80. MORTGAGE BROKER AND LOAN OFFICER LICENSING

The Finance Commission of Texas (the "Commission") adopts amendments to Subchapter A, §80.2, concerning definitions, §80.3, concerning licensing - general, §80.5, concerning renewals, and §80.6, concerning sponsorship and termination thereof; Subchapter B, §80.10, concerning prohibition on false, misleading, or deceptive practices and improper dealings; Subchapter C, §80.12, concerning display of license verification and license record changes, and §80.13, concerning books and records; Subchapter G, §80.18, concerning enforceability of liens; and Subchapter K, §80.23, concerning annual reports, in conjunction with the Commission's review of Chapter 80.

Sections 80.2, 80.3, 80.5, 80.6, 80.10, 80.12, 80.13, 80.18, and 80.23 are adopted without changes to the text as published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6665), and will not be republished.

In general, the purpose of the amendments is to conform the rules to the Department's current practice, to eliminate obsolete provisions, and to add clarification. Sections 80.2 and 80.3 have been revised to add clarification. Section 80.5 has been revised to remove obsolete language. Section 80.6 adds language to clarify a current practice. Section 80.10 has been revised to improve consumer awareness and clarify procedures. Sections 80.12 and 80.13 have been revised to clarify procedures. Section 80.18 has been revised to delete a form that does not per-

tain to the Section, and that already appropriately exists in §80.9. Section 80.23 has been revised for clarification.

The 30-day comment period ended September 22, 2008, during which we received various comments regarding the proposed rule amendments. A summary of the comments relating to the proposed amendments and the Department's responses follows.

Comment: Regarding the fee charged for license record changes, a commenter suggested that the fee in 7 TAC §80.12(e) be increased from \$25 to something higher. No specific amount was recommended.

Response: Since the fee is set in the statute, *Finance Code* §156.211(b)(b-1), it cannot be changed in the regulation.

SUBCHAPTER A. LICENSING

7 TAC §§80.2, 80.3, 80.5, 80.6

The amendments are adopted under Texas Finance Code §11.306, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the amendments are contained in Texas Finance Code, Chapter 156.

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

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Commissioner

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SUBCHAPTER B. PROFESSIONAL CONDUCT

7 TAC §80.10

The amendments are adopted under Texas Finance Code §11.306, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the amendments are contained in Texas Finance Code, Chapter 156.

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

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SUBCHAPTER C. ADMINISTRATION AND RECORDS

7 TAC §80.12, §80.13

The amendments are adopted under Texas Finance Code §11.306, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the amendments are contained in Texas Finance Code, Chapter 156.

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

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SUBCHAPTER G. ENFORCEMENT OF LIENS

7 TAC §80.18

The amendments are adopted under Texas Finance Code §11.306, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the amendments are contained in Texas Finance Code, Chapter 156.

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SUBCHAPTER K. ANNUAL REPORTS

7 TAC §80.23

The amendments are adopted under Texas Finance Code §11.306, which authorizes the Commission to adopt rules to enforce Title 3 of the Texas Finance Code.

The statutory provisions affected by the amendments are contained in Texas Finance Code, Chapter 156.

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

7 TAC §§84.201 - 84.203

The Finance Commission of Texas (commission) adopts new §84.201, concerning Time Price Differential, §84.202, concerning Default Charge, and §84.203, concerning Deferment Charge, with regard to motor vehicle sales finance dealers licensed by the Office of Consumer Credit Commissioner. The commission adopts new §§84.201 - 84.203, with changes to the proposal published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5182).

The commission received two written comments on the proposal from McGinnis, Lochridge & Kilgore, L.L.P. on behalf of GMAC LLC (GMAC) and the American Financial Services Association (AFSA). The comment from GMAC provides specific recommendations to improve certain provisions within the computational rules. The comment from the AFSA outlines concerns related to payment application. The AFSA comment overall is negative, stating: "AFSA and its members strongly urge the reconsideration of the rules in question." However, the AFSA comment also recognizes the agency's continued dialogue with the industry: "We note that a number of our concerns are being addressed currently and are grateful for that." The specific comments are addressed following the individual purpose of the provision at issue. Additionally, the agency has revised several provisions as a result of informal comments received. These revisions are also summarized following the particular purpose of the rule to reflect changes made since the proposal.

The new rules contain new operational provisions regarding charges. The purpose of the new operational rules is to conform the commission's rules to current practice, to provide clarification for licensees required to comply with the rules, and to provide more specific guidance for the examination process. The following paragraphs outline the individual purposes of each adopted rule.

Section 84.201 explains the methods and procedures for calculating time price differential in connection with a motor vehicle retail installment sales contract.

Regarding §84.201(a) and (b), although the commenter "agrees that these sections are appropriate," the commenter wishes "to make clear that the two statutory sections referred to in the proposed rule are *alternative* rate ceilings, as provided in Tex. Fin. Code §303.001(a) and (b)." (emphasis in original, footnote omitted). The commenter states in accompanying footnote 6: "The statute makes clear that the creditor may rely upon and comply with either of the two rate ceilings."

The commission agrees with the commenter's interpretation of the statute and has made identical revisions to both subsections (a) and (b) of §84.201 in order to provide more clarity on this issue. While the commission does not use the commenter's suggested language, the revisions incorporate the commenter's concept. The word "both" has been inserted after the word "exceeds," and the conjunction "or" has been replaced with "and." Additionally, the new second sentence added to both subsections states as follows: "A retail installment sales contract may be in compliance with either statutory rate specified in this subsection."

Since the proposal, a correction has been made to §84.201(d)(1)(D) by inserting the following introductory phrase to the first sentence: "If the maximum time price differential rate is the rate specified by Texas Finance Code, §348.105," which is followed by the proposed language regarding the maximum add-on rate. The additional phrase is intended to clarify the rate being used. Sometimes the add-on rate may be higher than the alternative rate, depending on the age of the vehicle. Thus, if the alternative rate is the highest rate, then the figure specifies the maximum add-on rate conversion from a simple finance charge rate to an add-on rate per \$100 per annum.

In response to informal comments received, a second clarification has been made to §84.201(d)(1)(D) in reference to the 18% rate utilized in Figure 7 TAC §84.201(d)(1)(D). The third sentence now reads as follows: "The alternative simple time price differential rate authorized by Texas Finance Code, §348.105 displayed as an example in Figure: 7 TAC §84.201(d)(1)(D) is 18% per annum." The new language begins with "authorized by Texas Finance Code, §348.105," reflecting the specific statutory section from which the 18% is derived. The additional language ends with "displayed as an example," which reflects that the rates used in the figure are the current highest simple finance charge rates allowed by law as of the date of adoption. With possible changes to these rates in the future, the use of the example language clarifies that the rates may be adjusted over time.

Two commenters bring forward concerns regarding §84.201(d)(3)(E) concerning application of payments. One commenter states: "[T]he rule contains proposed language relating to the application of payments which appears to us to not only be lacking in statutory authority and contrary to clear common law permitting the creditor to apply payments in any way unless the consumer provides instructions, but also to be excessively and unnecessarily complex. . . . In addition, the application laid out in the rules is not commensurate with the best interests of consumers or vehicle finance companies." Similarly, another commenter echoes concerns about current Texas common law, as follows: "This portion of the proposed rule is not consistent with controlling Texas law and would often be disadvantageous to consumers. It would place Texas outside of the prevailing rule in the United States. The long-standing

common law of Texas and the United States generally is that a consumer ordinarily may direct the application of its payments and, in the absence of instructions from the payor, a creditor may apply payments to any amounts that are due and owing." (footnote omitted).

Concerning statutory authority, Texas Finance Code, §348.103 establishes usury limitations. In order to determine whether usury has occurred and to give meaning to the usury statute, there must be some standard for the application of payments. Otherwise, if it cannot be determined how a payment should be applied, then whether usury has occurred could not be determined, and the usury statute would have no meaning. Texas Finance Code, §348.513 provides jurisdiction to the Office of Consumer Credit Commissioner "to adopt rules to enforce this chapter," including §348.103, and hence to set a standard for the application of payments. Enforcement of the usury statute requires that the agency determine which calculation methods may be used, the amount of time price differential (also known as finance charge), the amount of principal, and what other charges are allowed.

For example, suppose a retail buyer has entered into a motor vehicle retail installment sales contract with a retail seller for repayment of the cash price and finance charge. The retail buyer submits the first payment and the retail seller looks to apply the payment to the contract. There are different methods of applying payments which do not affect the principal balance in the same manner. Some of the payment goes toward reducing the principal balance, some goes toward finance charge, and some may go toward other charges. The manner in which the payment is applied affects the resulting principal balance. The method used to reduce the principal balance determines the amount of finance charge collected. Therefore, determining whether a finance charge is usurious under Texas Finance Code, §348.103 is directly connected and dependent on the application of payments. A determination for the proper application of payments is critical to the agency's ability to enforce §348.103. Accordingly, a standard for application of payments is within the agency's statutory authority.

In the absence of contractual language or direction from the retail buyer, the commission agrees that the common law decisions requiring that the application be most favorable to the retail buyer is the prevailing standard on this issue. A creditor cannot arbitrarily apply payments to create additional finance charge being due, or apply payments to artificially create additional finance charge. The commission maintains that the application of payments provision in §84.201(d)(3)(E) as proposed is not in conflict with the common law.

The commission believes that the common law does not extend to the circumstances contemplated by the rule. The rule and the common law address different situations. The common law allows a creditor to determine to which installment the payment will be applied, absent direction from the debtor, when there are several debts or several installments due. The circumstances attendant to this rule involve the application of the payment to an account in which only one installment is in arrears or to an account in which there is no question as to which installment the payment should be applied. The common law addresses to which past due installment the payment should be credited, not how it should be credited. The commission disagrees with the commenters' suggestion that the common law extends to the circumstances addressed by the rule. There are no Texas cases

directly on point, and the commission believes that the rule is outside the circumstances contemplated by the common law.

Based on the high number of contracts and factual scenarios, one commenter indicates that it is practically impossible to determine what is most beneficial to each consumer and factually compliant with state and federal law, stating: "The proposed rule provides that the contract may specify a different application priority. However, it is not practical to anticipate in the contract all the possible issues that may come up in tens of thousands of consumer contracts. The algorithms to satisfy the FTC rule, the consumers' intentions, and other legal considerations are complex and would require lengthy additions."

The agency disagrees with the commenter's position, as the rule follows the current practice of the industry. The vast majority of plain language contract submissions are all of a similar nature, in which the holder does specifically include contract language regarding the application of payments in contracts employing the true daily earnings method. Thus, it is the agency's understanding that most of the industry currently does contract for how to handle these complex fact scenarios.

Additionally, both commenters believe that proposed §84.201(d)(3)(E) could result in difficulty complying with the rule promulgated by the Federal Trade Commission (FTC) regarding anti-pyramiding of late charges. Generally speaking, the FTC anti-pyramiding rule prohibits creditors from charging a late charge solely because of another late charge. One commenter seems to argue that the rule as proposed would require a creditor to take a late charge even if one is not due. Section 84.201(d)(3)(E) as proposed simply lays out the order that the payments should be applied and does not require the licensee to credit the payments in a manner that would create a late charge in violation of the FTC rule. Thus, the rule does not require the licensee to comply with every item in the list when it applies payments under this rule and therefore the rule as proposed does not result in or require any FTC violation.

The commission does, however, recognize the commenters' concerns related to compliance with Texas common law and the FTC anti-pyramiding rule. In order to provide further clarity on the rule, §84.201(d)(3)(E) has been modified and divided into three parts: (1) general requirements if no payment application is specified in the contract, (2) requirements for sales tax deferred transactions that have been assigned to related finance companies, and (3) a specific provision stating accepted use of the model provision found in 7 TAC §84.808(21) or a variation of it as allowed under that section or §84.809. The commission believes that these revisions better outline the original intent of the provision and more clearly demonstrate how the application of payments provided in the rule does not conflict with common law or FTC regulations. Additionally, to maintain consistency in terminology with §84.808(21), the former title of this provision, "Allocation of payment," has been replaced with "Application of payments."

Section 84.202 outlines the procedures for assessing and collecting a default charge in connection with a motor vehicle retail installment sales contract.

In response to informal comments received, changes have been made to §84.202(f)(1) and (f)(2) in order to clarify the calculation of default periods. The word "after" has been inserted after the word "until" in order to track the statutory language in Texas Finance Code, §348.107. For this adoption, the resulting first sentence of §84.202(f)(1) for ordinary and non-heavy com-

mercial vehicles reads as follows: "A default charge may not be assessed until after the 15th day after the installment due date." The corresponding change has also been made to §84.202(f)(2). The accompanying examples for both provisions remain correct as proposed.

Section 84.202(h) regarding balloon payments has been revised due to informal comments received. The changes more accurately reflect the retail buyer's options as provided by the statute. For this adoption, the revised sentence reads as follows: "If the retail buyer does not exercise the option to refinance the balloon payment as permitted by Texas Finance Code, §348.123, a default charge is allowed on the balloon payment."

Section 84.203 explains the methods and procedures for calculating and collecting a deferment charge in connection with a motor vehicle retail installment sales contract.

Regarding §84.203(a), one commenter requests two clarifying additions, both of which the commission accepts and has incorporated into this adoption. First, the commenter states that while subsection (a) "refers to a 'deferment', the section defines a 'deferment charge'." The commenter recommends inserting the word "charge" after deferment as part of the quoted term in the first sentence. The commission agrees with this clarifying change and has added the word "charge" into the defined term for this adoption.

Also with regard to §84.203(a), the commenter states: "A clarification would be helpful to make clear that the accrual during the deferral period of finance charge at the regular contract rate already agreed upon in the original contract is not an 'additional charge', as that would happen whether or not there was a deferment." (footnote omitted). The commission recognizes the commenter's concern and has inserted the following as the new fourth sentence of subsection (a): "The term 'deferment charge' does not include the continuing accrual of finance charge at the contract rate already agreed upon in a retail installment sales contract employing the true daily earnings method." The inserted sentence contains much of the commenter's suggested wording with a slight modification at the end of the sentence.

Concerning §84.203(b), the agency received informal comments regarding the issue of requiring the retail buyer's signature to authorize a deferment. There are certain fact situations where a signature would not be required. For example, if the holder does not change the payment amount and does not impose a charge for the deferment. It is the agency's understanding, however, that most if not all holders charge for deferments. A deferment falls under Texas Finance Code, §348.116 as an amendment to a retail installment sales contract requiring "confirm[ation] in a writing signed by the retail buyer." Thus, §348.116 requires that the retail buyer's written agreement be obtained to confirm a deferment. There are several methods for a licensee to comply with this statutory requirement, such as email, fax, or even a notation made by the retail buyer on a signed check. Due to the widespread use of email and the allowance under the law for electronic signatures, the commission believes that an email signature from the retail buyer with a confirming statement would fulfill the statutory requirement under §348.116. Therefore, the last sentence of §84.203(b) has been deleted and will be replaced with the following for this adoption: "The retail buyer's written agreement to the bilateral or mutual deferment may be confirmed by an email signature, an electronic signature, a facsimile signature, a written notation made by the retail buyer on a signed check, or some other writing signed by the retail buyer."

A statutory reference to §348.116 has also been added to the preceding sentence of the rule.

In addition, the agency received informal comments regarding the deferment signature requirement in relation to the recent hurricanes that have affected numerous licensees along the Texas coast. Concerns were presented that licensees may not be able to reach evacuated customers in order to obtain their written agreement to a deferment. Therefore, in light of these concerns, a disaster exception has been added as §84.203(b)(2) which states that the holder is not required to obtain the retail buyer's signature if, according to Texas Government Code requirements, that buyer resides in an area designated as a state of disaster and the deferment occurs before the state of disaster has been terminated.

In reference to §84.203(c), one commenter states that "section 84.203(c) is a new section that would require a notice of deferment." (footnote omitted). While §84.203(c) is a new provision, a deferment notice is not a new requirement, but rather is already statutorily required by Texas Finance Code, §348.116 to confirm an amendment to the retail installment sales contract. Subsection (c) of the rule merely serves to provide guidance for complying with the statute.

More specifically, the commenter disagrees with two items in the deferment notice under §84.203(c): the balance on the account, and the amount of the deferment charge. First, regarding the balance on the account, the commenter states: "A requirement that the deferment notice contain the balance on the account will be of very limited interest to most consumers. Most consumers who defer payments are not able to pay their accounts in full at the time of deferment. Moreover, since the balance of a true daily earnings contract changes daily, any balance information disclosed in the deferment notice will not remain accurate." The commission agrees with the commenter that the balance on the account would not be a necessary or useful component in the deferment notice and has removed it for this adoption.

Second, concerning the amount of deferment charge phrase in subsection (c), the commenter has the same concerns outlined under §84.203(a) regarding accrual during the deferment period of finance charge already agreed upon in the contract. For consistency purposes and in continued recognition of this concern, the commission has clarified this phrase in §84.203(c) to read as follows: "the total amount of any deferment charge and any authorized additional deferment cost."

Also regarding §84.203(c), the commenter requests a technical correction by replacing "The" with "A" to begin the last sentence. The commission agrees with this correction and has incorporated the change for this adoption.

In reference to §84.203(f), one commenter states: "The application of the proposed section is not entirely clear. A deferral will not result in negative accrual of time price differential. Thus, as written the section probably will not serve the full intended purpose We understand that the intent of the proposed section is to prevent negative amortization from occurring once the deferral period is over." The commenter correctly understands the intended purpose of this subsection and the commission agrees that clarification is needed.

Therefore, the commission has revised subsection (f) to read as follows (changes begin after the first introductory phrase of the first sentence, replacing language through the end of the subsection), "Negative accrual of time price differential. In a retail installment sales contract employing the true daily earn-

ings method, the payments scheduled for the period following the deferral (including the deferred payments) must be sufficient to: (1) pay the time price differential remaining on the deferred payment or payments and the amount currently accruing after the period of deferral; or (2) be applied in another manner that is more favorable to the retail buyer than the method provided in paragraph (1) of this subsection." The new language contains much of the commenter's suggested wording with some modifications in paragraph (1) and additional language in paragraph (2).

Concerning §84.204(g), one commenter states: "We believe that the intent of the proposal may be to require that payments in excess of the amount necessary to pay the deferral fee and bring the account current should be applied to the amount owed on the contract, and to require amounts in excess of that amount to be applied for the consumer's benefit." As with subsection (f), the commenter also correctly understands the intended purpose of subsection (g). The commission agrees with most of the commenter's suggested revisions to §84.203(g). Subsection (g) for this adoption now reads as follows (changes begin after the first introductory phrase of the first sentence): "Accounting of payment. If a payment is submitted from which a deferment charge is taken, any excess of the amount paid over the amount necessary to bring the account current must be applied to the remaining balance of the retail installment sales contract. However, in a precomputed retail installment sales contract or a contract employing the scheduled installment earnings method, any difference that exceeds \$3.00 must be returned to the retail buyer if the retail buyer requests the refund within 30 days of the payment."

The most significant change from the commenter's version to the language in this adoption is the use of 30 days instead of 10 days for the retail buyer to request a refund of greater than \$3.00. The commission believes that 30 days is necessary in order to ensure that time for paying an installment will pass. Most debtors only pay attention to an account when they are making a payment. It is reasonable to make this time period long enough to cover the instance of a retail buyer making a payment. Otherwise, many retail buyers do not realize the amount that has been overpaid. Thus, the commission agrees with and has incorporated most of the commenter's suggested language aside from this timeline issue.

These new sections are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the Finance Commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

These rules affect Texas Finance Code, Chapter 348.

§84.201. *Time Price Differential.*

(a) Precomputed retail installment sales contracts. A retail installment sales contract may not contain a time price differential charge that exceeds both the add-on rates authorized by Texas Finance Code, §348.104 and the alternative simple time price differential rate authorized by Texas Finance Code, §348.105 as calculated by the add-on method or scheduled installment earnings method. A retail installment sales contract may be in compliance with either statutory rate specified in this subsection. Prepaid time price differential in the form of points is not permitted.

(b) Time price differential-bearing retail installment sales contracts. A retail installment sales contract may not contain a time price

differential charge that exceeds both the maximum annualized daily rate authorized by Texas Finance Code, §348.104 and the alternative simple time price differential rate authorized by Texas Finance Code, §348.105 as calculated by the true daily earnings method. A retail installment sales contract may be in compliance with either statutory rate specified in this subsection. Prepaid time price differential in the form of points is not permitted.

(c) Minimum time price differential. In lieu of the time price differential charge specified under subsections (a) and (b), a retail seller may charge a minimum time price differential charge of \$25.

(d) Method of calculation.

(1) Regular payment contract using sum of the periodic balances method. The time price differential charge is computed using the add-on rates authorized by Texas Finance Code, §348.104 or the alternative time price differential rate authorized by Texas Finance Code, §348.105 converted to an equivalent add-on rate per \$100 per annum.

(A) Base time price differential charge. The base time price differential charge is determined by multiplying the principal balance subject to a finance charge, as defined by §84.102(11) of this title (regarding Definitions), by the applicable add-on rate per \$100 per year for the corresponding term of the contract. If the retail installment contract is payable for a period that is shorter or longer than a year or is for an amount that is less or greater than \$100, the amount of the time price differential charge is decreased or increased proportionately.

(B) Add-on rates. The applicable add-on rate per \$100 per year is determined by the model year designated by the manufacturer of the vehicle.

(C) Deferred sales tax. For usury purposes, the deferred sales tax is allocated on a straight line basis. A straight line basis is calculated by dividing the original gross deferred sales tax amount by the original term of the contract. The allocation of the deferred sales tax for the final payment must be adjusted for any rounding differences. The payment amount disclosed on the retail installment sales contract must include the straight line allocation of the deferred sales tax per installment.

(D) Conversion of the alternative time price differential rate to an add-on rate per \$100 per annum. If the maximum time price differential rate is the rate specified by Texas Finance Code, §348.105, the maximum add-on rate per \$100 per annum cannot exceed the add-on rate contained in Figure: 7 TAC §84.201(d)(1)(D). The add-on rate per \$100 per annum is determined by converting the current maximum alternative rate authorized by Texas Finance Code, §348.105 to an equivalent add-on rate for the given monthly term of the contract. The alternative simple time price differential rate authorized by Texas Finance Code, §348.105 displayed as an example in Figure: 7 TAC §84.201(d)(1)(D) is 18% per annum. If the alternative simple time price differential rate is adjusted according to Texas Finance Code, Chapter 303 and is greater than 18% per annum, the add-on rates shown in Figure: 7 TAC §84.201(d)(1)(D) should be adjusted accordingly. Figure: 7 TAC §84.201(d)(1)(D)

(2) Scheduled installment earnings method. The scheduled installment earnings method can be used for both regular and irregular payment contracts.

(A) Maximum time price differential. The maximum time price differential charge is computed by applying the applicable maximum daily rate to the unpaid principal balance subject to a finance charge, as defined by §84.102(11) of this title, 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 subject to a finance charge. The computation of the time price differential must comply with the U.S. Rule as defined by §84.102(19) of this title.

(B) Maximum annualized daily rate.

(i) Sales tax advanced transactions. On sales tax advanced transactions using the scheduled installment earnings method, the annualized daily rate is either:

(I) the annual percentage rate disclosed on the retail installment sales contract; or

(II) the contract rate if the retail seller requires the retail buyer to purchase credit life or credit accident and health insurance.

(ii) Sales tax deferred transactions. On sales tax deferred transactions using the scheduled installment earnings method, the annualized daily rate is the contract rate.

(iii) Effective rate. The maximum annualized daily rate cannot exceed the effective rate contained in Figure: 7 TAC §84.201(d)(2)(B)(iii) for the equivalent monthly period and appropriate add-on rate per \$100 determined by the model year designated by the manufacturer of the vehicle. The effective rates contained in Figure: 7 TAC §84.201(d)(2)(B)(iii) are the current maximum annualized daily rate authorized by Texas Finance Code, §348.104 or the alternative simple time price differential rate authorized by Texas Finance Code, §348.105. The alternative simple time price differential rate authorized by Texas Finance Code, §348.105 displayed as an example in Figure: 7 TAC §84.201(d)(2)(B)(iii) is 18% per annum. If the alternative simple time price differential rate is adjusted according to Texas Finance Code, Chapter 303 and is greater than effective rate contained in Figure: 7 TAC §84.201(d)(2)(B)(iii), the published rate will be highest effective rate.

Figure: 7 TAC §84.201(d)(2)(B)(iii)

(iv) Irregular payment contract effective rate. On a retail installment sales contract that is an irregular payment contract, the highest effective rate is determined by taking the closest monthly effective rate as shown in Figure: 7 TAC §84.201(d)(2)(B)(iii) assuming that the contract was payable in substantially equal successive monthly installments beginning one month from the date of the contract.

(I) The closest monthly period is determined as follows:

(-a-) Count the number of days from the date of the contract to the originally scheduled maturity date;

(-b-) Divide the results of item (-a-) of this subclause by 365;

(-c-) Multiply the results of item (-b-) of this subclause by 12.

(II) If the results of subclause (I) of this clause are exactly halfway or more between the two monthly periods, the closest monthly period is rounded up to the next monthly period. For example, if the closest monthly period is determined to be 14.50 months, the maximum annualized daily rate is the effective rate for 15 months.

(III) If the results of subclause (I) of this clause are less than halfway between the two monthly periods, the closest monthly period is rounded down to the previous monthly period. For example, if the closest monthly period is determined to be 14.49 months, the maximum annualized daily rate is the effective rate for 14 months.

(C) Deferred sales tax. For usury purposes, the deferred sales tax is allocated on a straight line basis. A straight line basis is calculated by dividing the original gross deferred sales tax amount by

the original term of the contract. The allocation of the deferred sales tax for the final payment must be adjusted for any rounding differences. The payment amount disclosed on the retail installment sales contract must include the straight line allocation of the deferred sales tax per installment.

(D) Contract rate less than the maximum annualized daily rate. If a retail seller consummates a retail installment sales contract with a contract rate that is less than the maximum annualized daily rate, the retail seller must compute the time price differential charge at the disclosed contract rate.

(3) True daily earnings method. The true daily earnings method can be used for both regular and irregular payment contracts.

(A) Maximum time price differential. The maximum time price differential charge is computed by applying the applicable daily rate to the unpaid principal balance subject to a finance charge, as defined by §84.102(11) of this title. The computation of the time price differential must comply with the U.S. Rule as defined by §84.102(19) of this title. The earned time price differential charge is computed as follows:

(i) multiply the unpaid principal balance subject to a finance charge by the applicable daily rate; and

(ii) multiply the results of clause (i) of this subparagraph by the number of days the actual unpaid principal balance subject to a finance charge is outstanding.

(B) Maximum annualized daily rate.

(i) Sales tax advanced transactions. On sales tax advanced transactions using the true daily installment earnings method, the annualized daily rate is either:

(I) the annual percentage rate disclosed on the retail installment sales contract; or

(II) the contract rate if the retail seller requires the retail buyer to purchase credit life or credit accident and health insurance.

(ii) Sales tax deferred transactions. On sales tax deferred transactions using the true daily installment earnings method, the annualized daily rate is the contract rate.

(iii) Effective rate. The maximum annualized daily rate cannot exceed the effective rate contained in Figure: 7 TAC §84.201(d)(2)(B)(iii) for the equivalent monthly period and appropriate add-on rate per \$100 determined by the model year designated by the manufacturer of the vehicle. The effective rates contained in Figure: 7 TAC §84.201(d)(2)(B)(iii) are the current maximum annualized daily rate authorized by Texas Finance Code, §348.104 or the alternative simple time price differential rate authorized by Texas Finance Code, §348.105 displayed as an example in Figure: 7 TAC §84.201(d)(2)(B)(iii) is 18% per annum. If the alternative simple time price differential rate is adjusted according to Texas Finance Code, Chapter 303 and is greater than effective rate contained in Figure: 7 TAC §84.201(d)(2)(B)(iii), the published rate will be highest effective rate.

(iv) Irregular payment contract effective rate. On a retail installment sales contract that is an irregular payment contract, the highest effective rate is determined by taking the closest monthly effective rate as shown in Figure: 7 TAC §84.201(d)(2)(B)(iii) assuming that the contract was payable in substantially equal successive monthly installments beginning one month from the date of the contract.

(I) The closest monthly period is determined as follows:

(-a-) Count the number of days from the date of the contract to the originally scheduled maturity date;

(-b-) Divide the results of item (-a-) of this subclause by 365;

(-c-) Multiply the results of item (-b-) of this subclause by 12.

(II) If the results of subclause (I) of this clause are exactly halfway or more between the two monthly periods, the closest monthly period is rounded up to the next monthly period. For example, if the closest monthly period is determined to be 14.50 months, the maximum annualized daily rate is the effective rate for 15 months.

(III) If the results of subclause (I) of this clause are less than halfway between the two monthly periods, the closest monthly period is rounded down to the previous monthly period. For example, if the closest monthly period is determined to be 14.49 months, the maximum annualized daily rate is the effective rate for 14 months.

(C) Deferred sales tax. For usury purposes, the deferred sales tax is allocated on a straight line basis. A straight line basis is calculated by dividing the original gross deferred sales tax amount by the original term of the contract. The allocation of the deferred sales tax for the final payment must be adjusted for any rounding differences. The payment amount disclosed on the retail installment sales contract must include the straight line allocation of the deferred sales tax per installment.

(D) Contract rate less than the maximum annualized daily rate. If a retail seller consummates a retail installment sales contract with a contract rate that is less than the maximum annualized daily rate, the retail seller must compute the time price differential charge at the disclosed contract rate.

(E) Application of payments.

(i) General requirements if no payment application specified in contract. If the retail installment sales contract does not prescribe the method for the application of the payment, the payment should be applied in the following order:

(I) earned but unpaid time price differential charge; and

(II) anything else owed under the contract.

(ii) Sales tax deferred transactions assigned to related finance companies. If the retail installment sales transaction is a sales tax deferred transaction in which the retail installment sales contract does not prescribe an application of payments method and the contract has been assigned by a dealer to its related finance company as that term is defined by Texas Tax Code, Chapter 152, the related finance company must apply the payment in the following order:

(I) amount of the straight line allocation of the deferred sales tax, if the transaction is a sales tax deferred transaction;

(II) earned but unpaid time price differential charge; and

(III) anything else owed under the contract.

(iii) Use of model provision sufficient. While the retail installment contract is not required to use the model provision, use of the model provision found in 7 TAC §84.808(21) (relating to Model Clauses), or a variation of it as allowed under that section or 7 TAC §84.809 (relating to Permissible Changes), is deemed to sufficiently prescribe the method of application of payment.

§84.202. *Default Charge.*

(a) Definition. A default charge is the additional charge for a late payment on a contract. The term default charge is synonymous with the term delinquency charge as contained in Texas Finance Code, §348.107.

(b) Precomputed regular payment contract using sum of the periodic balances method. For a regular payment contract employing the add-on method and the refunding method of the sum of the periodic balances, a holder may assess, charge, and collect a default charge not to exceed 5% of the scheduled payment or a default charge on the past due amount computed at the maximum daily rate authorized for the contract from the due date to the date that the past due amount is paid.

(c) Scheduled installment earnings method. For a regular or an irregular payment contract employing the scheduled installment earnings method, a holder may assess, charge, and collect a default charge not to exceed 5% of the scheduled payment and a default charge on the past due amount computed at the maximum daily rate authorized for the contract from the due date to the date that the past due amount is paid.

(d) True daily earnings method. For a regular payment contract or an irregular payment contract employing the true daily earnings method, a holder may assess, charge, and collect a default charge not to exceed 5% of the scheduled payment and a default charge on the past due amount computed at the maximum daily rate authorized for the contract from the due date to the date that the past due amount is paid. The default charge authorized under this subsection is in addition to the contractual time price differential charge earned on the principal balance subject to a finance charge.

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

(f) Default period.

(1) Ordinary vehicles and non-heavy commercial vehicles. A default charge may not be assessed until after the 15th day after the installment due date. For example, if the installment due date is the 1st of the month, a default charge may not be assessed until the 17th of the month.

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

(g) Pyramiding prohibited. An authorized lender seeking to assess additional interest for default on a retail installment sales contract under Texas Finance Code, Chapter 348 must comply with the prohibition on the pyramiding of late charges set forth in the Federal Trade Commission Credit Practices Rule at 16 C.F.R. §444.4.

(h) Default charge on final installment balloon payment. If the retail buyer does not exercise the option to refinance the balloon payment as permitted by Texas Finance Code, §348.123, a default charge is allowed on the balloon payment.

(i) Default charge on deferred downpayment. A default charge under Texas Finance Code, §348.107 is not allowed on a deferred downpayment.

§84.203. *Deferment Charge.*

(a) Definition. A "deferment charge" means the payment of an additional charge to defer the payment date of a scheduled payment or partial payment on a contract. A deferment charge prescribed by this section may occur in a retail installment transaction that employs

the precomputed add-on method for regular payment contracts using the sum of the periodic balances, the scheduled installment earnings method, or the true daily earnings method. This section applies only to an amendment relating to the deferment of all or a part of one or more installments, and does not apply to amendments relating to renewing, restating, or rescheduling the unpaid balance under a retail installment sales contract. The term "deferment charge" does not include the continuing accrual of finance charge at the contract rate already agreed upon in a retail installment sales contract employing the true daily earnings method. The parties to a retail installment sales contract may agree to modify the terms of the transaction as long as the amendment conforms to the requirements of Texas Finance Code, Chapter 348, Subchapter B.

(b) Bilateral or mutual deferment.

(1) General requirements. A retail buyer and a holder may mutually agree to defer all or a part of one of more scheduled installments. Bilateral or mutual deferments must be agreed upon in writing as required by Texas Finance Code, §348.116. The retail buyer's written agreement to the bilateral or mutual deferment may be confirmed by an email signature, an electronic signature, a facsimile signature, a written notation made by the retail buyer on a signed check, or some other writing signed by the retail buyer.

(2) Disaster exception. A holder is not required to obtain the retail buyer's signature if the following conditions are met:

(A) The retail buyer resides in an area designated as a state of disaster under Texas Government Code, §418.014; and

(B) The deferment occurs before the state of disaster has been terminated:

(i) by executive order; or

(ii) by expiration as described in Texas Government Code, §418.014(c).

(c) Deferment notice. Each deferment must be noted on the account record at the time the deferment is made. A written notice containing the conditions of the deferment must be furnished to the retail buyer as required by Texas Finance Code, §348.116. A deferment notice must include the name of the holder, the name of the retail buyer, the account number of the retail buyer, the date of the deferment, the installment or installments being deferred, the deferment period, the total amount of any deferment charge and any authorized additional deferment cost, and the date and amount of the next installment due.

(d) Limitation of number of installments being deferred per amendment. A holder may only defer the equivalent of three monthly installments per amendment. This limitation applies to the number of whole or partial installments that can be deferred, not the length of time an installment can be deferred.

(e) Computation of deferment charge. A holder of a retail installment sales contract under Texas Finance Code, Chapter 348 may calculate the deferment charge by any method of calculation as long as the deferment charge does not exceed the maximum amount permitted by Texas Finance Code, §348.114 and this section.

(1) Regular payment contract using sum of the periodic balances method.

(A) Base deferment charge. For a regular payment contracts employing the add-on method and the refunding method of the sum of the periodic balances, a holder may assess, charge, and collect a base deferment charge computed by:

(i) Multiplying the amount of the installment or installments being deferred by the maximum effective rate authorized for the contract;

(ii) dividing the results of clause (i) of this subparagraph by 12; and

(iii) multiplying the results of clause (ii) of this subparagraph by the number of months the installment or installments are being deferred.

(B) Additional deferment costs. In addition to the base deferment charge authorized by this section, the holder of a retail installment sales contract may collect from the retail buyer the amount of the additional cost to the holder for:

(i) premiums for continuing in force any insurance coverages provided by the retail installment contract; and

(ii) any additional necessary official fees.

(C) Minimum deferment charge. The minimum deferment charge authorized under this section is \$1.00.

(2) Scheduled installment earnings method or true daily earnings method.

(A) Base deferment charge. For a regular or an irregular payment contract employing the scheduled installment earnings method or true daily earnings method, a holder may assess, charge, and collect a base deferment charge computed by:

(i) Multiplying the amount of the installment or installments being deferred by the maximum daily rate authorized for the contract; and

(ii) multiplying the results of clause (i) of this subparagraph by the actual number of days the installment or installments are being deferred.

(B) Additional deferment costs. In addition to the base deferment charge authorized by this section, the holder of a retail installment sales contract may collect from the retail buyer the amount of the additional cost to the holder for:

(i) premiums for continuing in force any insurance coverages provided by the retail installment contract; and

(ii) any additional necessary official fees.

(C) Minimum deferment charge. The minimum deferment charge authorized under this section is \$1.00.

(f) Negative accrual of time price differential. In a retail installment sales contract employing the true daily earnings method, the payments scheduled for the period following the deferral (including the deferred payments) must be sufficient to:

(1) pay the time price differential remaining on the deferred payment or payments and the amount currently accruing after the period of deferral; or

(2) be applied in another manner that is more favorable to the retail buyer than the method provided in paragraph (1) of this subsection.

(g) Accounting of payment. If a payment is submitted from which a deferment charge is taken, any excess of the amount paid over the amount necessary to bring the account current must be applied to the remaining balance of the retail installment sales contract. However, in a precomputed retail installment sales contract employing the scheduled installment earnings method, any difference that exceeds \$3.00 must

be returned to the retail buyer if the retail buyer requests the refund within 30 days of the payment.

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

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

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Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7621



SUBCHAPTER G. EXAMINATIONS

7 TAC §84.702

The Finance Commission of Texas (commission) adopts new §84.702, concerning Prohibited Advertising, with regard to motor vehicle sales finance dealers licensed by the Office of Consumer Credit Commissioner. The commission adopts new §84.702 with changes to the proposal published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5185).

The commission received three written comments on the proposal from the American Financial Services Association (AFSA), the Texas Automobile Dealers Association (TADA), and from William R. Crocker. The comment from the AFSA outlines concerns related to prohibited advertising. The AFSA comment overall is negative, stating: "AFSA and its members strongly urge the reconsideration of the [rule] in question." However, the AFSA comment also recognizes the agency's continued dialogue with the industry: "We note that a number of our concerns are being addressed currently and are grateful for that." The comment from the TADA opposes several provisions within the rule. William Crocker's comment contains objections to many provisions as well as the rule as a whole: "I would urge that the necessity for the proposed advertising rule be reconsidered, and that if it is pursued at all, it be rewritten with such specificity that an advertiser can with certainty know what is prohibited and what is not prohibited" The specific comments are addressed following the individual purpose of the provision at issue. Additionally, the agency has revised several provisions as a result of informal comments received. These revisions are also summarized following the purpose of the rule to reflect changes made since the proposal.

The general purpose of the new operational rule regarding advertising is to conform the commission's rules to current practice, to provide clarification for licensees required to comply with the rule, and to provide more specific guidance for the examination process. The following paragraph outlines the specific purposes of the adopted rule.

Section 84.702 describes the prohibition for licensees on misleading advertising found in Texas Finance Code, §341.403. Section 341.403 applies to transactions regulated under Subtitle B (which includes Chapter 348), Subtitle C, and Chapter 394. The rule benefits the industry by defining phrases and practices that must not be used unless accurate. This section benefits consumers by eliminating or reducing confusing and potentially misleading advertising. The rule also references necessary compliance with federal truth in lending requirements.

Since the proposal, one technical correction has been made in subsection (a) of §84.702. In the first sentence, after "Chapter 348" the word "each" has been inserted to read that "each licensee must comply with Texas Finance Code, §341.403."

In response to informal comments received, the term "misleading" has been deleted and replaced with "prohibited" in the rule's title. Similarly, subsection (b) has been revised by deleting the introductory phrase and replacing it with the following: "The licensee must not:". The commission believes that this terminology provides more accurate wording in that the rule contains specific advertising practices that are prohibited unless the licensee complies with the representation made. Additionally, for grammatical purposes, the word "to" has been deleted from the beginning of proposed paragraphs (1) and (3).

Regarding subsection (b)(1) of §84.702, two commenters object to the prohibition of the use of "easy payments" and "repayment in easy installments" as listed in the rule "unless the phrase used is accurate." One commenter states: "The use of the term 'easy' is not false, misleading, or deceptive under the DTPA. The term may be considered 'puffing' or an 'opinion,' but it is not false, misleading, or deceptive. If a statement is 'puffing' or an 'opinion,' the courts have held that it cannot be actionable under . . . the DTPA." (footnote omitted). The commission agrees with the commenters in that an opinion would not properly fit under subsection (b)(1). An opinion by nature is not right or wrong and cannot be "accurate." Therefore, in §84.702(b)(1), the commission has deleted the phrases "easy payments" and "repayment in easy installments" and made corresponding technical corrections for this adoption.

One of the commenters also disagrees with the use of "lowest rates" or "best rates" in §84.702(b)(1), stating: "'Lowest' and 'best' are absolutes that, even though the advertising dealer believes them to be true, can never be safely used for fear that they could be disproven by the showing of an obscure lower or better rate." In order to support its advertising claims, a licensee may perform a study, analysis, or survey, or the licensee may hire a marketing firm to perform the same. These studies or surveys may reasonably be limited to a certain geographical area and time span. Accordingly, the terms "lowest rates" or "best rates" may be determined as accurate based on a particular study or survey, resulting in these phrases being used with certainty. Thus, the commission declines to delete the phrases "lowest rates" or "best rates" and maintains that the remaining phrases in §84.702(b)(1) are not opinion and may be supported by a study or survey performed by the licensee or a marketing firm.

Two commenters object to subsection (b)(2) of §84.702 as being unclear regarding the advertising of "new reduced rates" or "a new type of service." One commenter further believes that the new rates or services outlined in the rule are not false, misleading or deceptive, stating: "It is not unusual for a business to change the terms of the type of credit or the terms of credit that may be extended in order to obtain a customer. Different motor vehi-

cle manufacturer, distributor, and lender terms change and are periodically offered. Oftentimes terms and promotions change in order to move one model of vehicle over another-which does not rise to the level of a false, misleading, or deceptive term."

The commission recognizes the commenters' concerns in reference to proposed §84.702(b)(2) and believes that the issues related to new rates and services should be evaluated and studied further. Therefore, the commission has deleted proposed subsection (b)(2) in its entirety from this adoption. The agency will review these issues through the examination process to determine whether this provision may be reintroduced at a future date.

Concerning §84.702(b)(3), two commenters oppose this provision as too subjective regarding statements made in reference to the "ease" or "speed" of procuring a contract. One commenter states: "The ease or speed at which a motor vehicle retail installment contract may be procured are statements of opinion and should not be prohibited. It is possible that in an individual and specific situation, the statement may be found to be false, misleading, or deceptive; however, that question would be a fact question and should be determined on an individual basis and should not be the subject of a blanket prohibition, as is proposed today."

The commission disagrees with the commenters, as §84.702(b)(3) is not a blanket prohibition, but rather the rule attempts to identify typical problem areas and then provide guidelines for licensees and examiners to evaluate whether a particular statement or representation crosses the line to be misleading such that it would be prohibited. The commission acknowledges that all advertising is inherently fact-specific, and agrees that the phrase "or to any other implied differentiation in policy or service" does not provide the proper clarity or objectivity necessary for the rule. Thus, that phrase has been deleted from subsection (b)(3) for this adoption. The provision as a whole, however, is not overly subjective as it grants flexibility for licensees to engage in the advertising practices mentioned as long as the licensee honors and adheres to the representations made. Accordingly, aside from the deletion of the last phrase before "unless" previously quoted (and minor technical changes), the commission maintains the remainder of §84.702(b)(3) for this adoption.

Two commenters object to subsection (b)(4) of §84.702 due to lack of clarity. One commenter states: "First of all, a business does not know whether it will be able to sell an advertised product when the advertisement is placed. Today's proposal requires a business to be able to look into the future before placing the advertisement because 'a reasonable number of contracts' must be 'actually' made on the advertised offer; otherwise, the licensee is in violation of this proposal." The other commenter echoes those concerns, stating: "Advertisements are placed in advance and conditions can change. And, advertisers can advertise hoping the public will respond ('0% financing for Suburbans') and sell nothing (because the price of fuel has risen astronomically again)."

The commission recognizes the commenters' concerns in reference to proposed §84.702(b)(4) and believes that the issues outlined in this provision should be evaluated and studied further. Therefore, the commission has deleted proposed subsection (b)(4) in its entirety from this adoption. The agency will review these issues through the examination process to determine whether this provision may be reintroduced at a future date. Additionally, the paragraphs within subsection (b)

have been renumbered accordingly along with grammatical technical corrections.

Regarding §84.702(c), one commenter disagrees with the use of "licensee," because "vehicle finance firms operate in a very different way to [the] retail seller, purchasing contracts that have already been made." The commission agrees with the commenter as this provision was intended to only apply to retail sellers. Thus, the commission has deleted "licensee" and replaced it with "retail seller" in subsection (c) for this adoption.

Another commenter states that "Subsections (c) and (d) of the proposed Rule appear to be redundant restatements of law and other existing regulations" and that these provisions "appear[] to do nothing to add clarity to the existing requirements" The commission disagrees with regard to both subsections, as each serves to direct licensees to applicable statutory provisions in relation to advertising.

Concerning §84.702(c), Texas Finance Code, Chapter 348 provides the statutory authority for the cash rebates language. The cash rebates provision of subsection (c) and the Chapter 341 advertising statute cited in subsection (a) are pulled together in the rule so that rebates and other monetary consideration may be viewed in the advertising context. In particular, cash rebates offered is an area where the agency has observed problems in relation to industry compliance. The provision is intended to instruct retail sellers to consult Chapter 348 for acceptable practices. In contrast to the commenter who objects to this provision, another commenter did not oppose it stating that subsection (c) "tracks the intent of Finance Code §348.403 and §348.404" Hence, aside from the replacement of "licensee" with "retail seller" as explained earlier, the commission maintains §84.702(c) for this adoption.

Likewise, subsection (d) is not redundant and shows licensees the laws that regulate their advertisements. Texas Finance Code, §348.009 specifically requires licensees to comply with the disclosure requirements of the Truth in Lending Act and its accompanying regulation, Regulation Z. Chapter 341, which also provides legal oversight for Chapter 348 licensees, contains a specific section that governs advertising by any licensee, registrant, or authorized lender under Subtitle B of Title 4. A licensee who reviews only one chapter of the Texas Finance Code would not understand its total legal responsibility. In one rule a licensee can find the citations to the statutory requirements for advertising. As with subsection (c), the commission believes that the inclusion of §84.702(d) along with the other statutory references within one rule will help instruct licensees as to the appropriate statutes under which to review not only how the transaction is executed, but also how it is advertised.

Another commenter requests that "when adopted, this rule reflect the specific written disclosure requirements because many licensees do not have the benefit of the wording of [TILA and Regulation Z]." Due to the complexity of these federal provisions, the commission declines to include the specific disclosure requirements in the rule. The commission believes that such language would go beyond the intended purpose of the provision as outlined above. Therefore, the commission has maintained subsection (d) for this adoption. Additionally, since the proposal a correction has been made to the TILA citation so that two specific sections and the most appropriate sections are referenced.

Two commenters oppose the inclusion of subsection (e) regarding compliance with the Texas Tax Code, stating that is outside

the scope of the agency. The commission has determined to omit §84.702(e) at this time.

This new section is adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the Finance Commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

This rule affects Texas Finance Code, Chapter 348.

§84.702. Prohibited Advertising.

(a) Under Texas Finance Code, Subtitle B, Chapter 348 each licensee must comply with Texas Finance Code, §341.403. A licensee may not, in any manner, advertise or cause to be advertised a false, misleading, or deceptive statement or representation relating to a rate, term, or condition of a motor vehicle retail installment sales contract, or advertise credit terms that the licensee does not intend to offer to retail buyers who qualify for those terms.

(b) The licensee must not:

(1) use phrases such as "lowest costs," "lowest rates," or "best rates" in an advertisement, unless the phrase used is accurate; or

(2) make any statement or representation with reference to the ease of procuring a motor vehicle retail installment sales contract, the speed with which it may be effected, or the freedom from credit inquiries addressed to particular sources of information, unless the licensee will comply with the representation made.

(c) A retail seller is prohibited from advertising an offer of cash, rebates, or any other monetary consideration to be provided by the licensee that is not authorized under Chapter 348.

(d) Texas Finance Code, §348.009 requires licensees to comply with federal disclosure requirements. Licensees who advertise rates, terms, or conditions of a motor vehicle installment transaction must comply with the disclosure requirements of 15 U.S.C. §1662 and §1664 and 12 C.F.R. §226.24 (Regulation Z).

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

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Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7621



7 TAC §§84.707 - 84.709

The Finance Commission of Texas (commission) adopts new §84.707, concerning Files and Records Required (Retail Sellers Assigning Retail Installment Sales Contracts), §84.708, concerning Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts), and §84.709, concerning Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts). The adopted rules outline recordkeeping requirements for motor vehicle sales fi-

nance dealers licensed by the Office of Consumer Credit Commissioner. The commission adopts new §§84.707 - 84.709 with changes to the proposal published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6668).

The commission received five written comments on the proposal from the Texas Automobile Dealers Association (TADA), the Van Tuyl Group, the Texas Independent Automobile Dealers Association (TIADA), the American Financial Services Association (AFSA), and from McGinnis, Lochridge & Kilgore, L.L.P. on behalf of GMAC LLC (GMAC). The comment from the TADA is generally negative, stating that the rules "would require more of a license holder than Texas Finance Code §348.517 requires." However, the TADA expresses its appreciation for changes made by the agency to accommodate dealers that cannot produce information electronically as well as other clarifications made in the rules. The TADA comment then provides specific recommendations to clarify the scope of certain provisions within §84.707. The comment from the Van Tuyl Group echoes some of the concerns submitted by the TADA in reference to §84.707, and also offers a few suggestions regarding §84.709. The comment from the TIADA is quite general in nature citing concerns with "the philosophical approach of the agency regarding rule-writing." The TIADA comment is negative overall, including broad statements that the new rules would "add substantially to the regulatory burden imposed on small businesses" and that §84.708 "exceeds the statutory authority granted to the agency." Yet the TIADA comment also states: "We appreciate the efforts of the agency to clarify the rules and incorporate the input of stakeholders in this re-proposal."

The comments submitted by the AFSA and GMAC focus on the provision proposed in §84.709(e)(2). The GMAC comment "supports and incorporates the comment made by the American Financial Services Association (AFSA) regarding the proposed recordkeeping requirements for assignees of motor vehicle retail installment sales contracts under Chapter 348 of the Texas Finance Code." Overall, both of these comments are positive and the AFSA states: "There were originally other issues with proposed §84.709, but the Commissioner and her staff addressed a number of them in the revised rules proposed in August, and have indicated that others are being addressed through various additional clarifications to further clarify the intent of the rules. Their work has significantly improved the proposed rules in many respects, and this comment is therefore limited to [§84.709(e)(2)]." The specific comments are addressed following the individual purpose of the provision at issue. Additionally, the agency has revised several provisions as a result of informal comments received. These revisions are also summarized following the particular purpose of the rule to reflect changes made since the proposal.

In general, the purpose of the new recordkeeping rules is to conform the commission's rules to current practice, to provide clarification for licensees required to comply with the rules, and to provide more specific guidance for the examination process. In addition, all three recordkeeping regulations grant considerable flexibility by permitting the licensee to maintain the required records by using one of the following systems, or a combination of these systems: a legible paper or manual recordkeeping system, an electronic recordkeeping system, or an optically imaged recordkeeping system, unless otherwise specified by statute or regulation.

The Texas Legislature amended the Texas Finance Code in 2002 to require the licensure of motor vehicle dealers who accept cash

for the sale of motor vehicles over time. The Office of Consumer Credit Commissioner, as part of the regulation, is directed to perform routine examinations of the licensees. Section 348.517 states: "A license holder *shall maintain a record of each retail installment transaction* made under this chapter as is necessary to enable the commissioner to determine whether the license holder is *complying with this chapter*." (emphasis added). The new rules provide guidance and clarification to the motor vehicle industry on how to conduct business and maintain records within the limits of the Texas Finance Code.

The records or information required by §§84.707 - 84.709 are already required by statute in order to demonstrate compliance with Chapter 348. These recordkeeping rules merely implement the statute by providing guidance for fulfilling the necessary compliance with §348.517. The following paragraphs outline the individual purposes of each rule.

Section 84.707 specifies the records that must be maintained or information that must be accessed for retail sellers assigning motor vehicle retail installment sales contracts. The regulation requires the following records or information: a retail installment sales transaction report, a retail installment sales transaction file for each retail installment sales transaction, assignment information, general business and accounting records supporting each disbursement made by the licensee in connection with a retail installment sales transaction, and adverse action records. The rule is necessary to ensure that the licensee will be able to comply with the statutory requirement to maintain sufficient documentation for licensed retail sellers who assign their retail installment sales contracts.

In response to informal comments received, §84.707(b) has been revised in order to clarify the records required for each retail installment sales transaction. Language has been added citing Chapter 348 of the Texas Finance Code. Please refer to the full comment response as provided in the discussion regarding §84.709(b). (Note that some comments may affect two or all three recordkeeping rules. While the changes are noted under each section, the full comment response will only be included under the rule or provision receiving the informal or official comment.)

Two new sentences have been added to subsection (c) of §84.707: one in response to an informal comment, and the other in response to an official comment received regarding the corresponding subsection as contained in §84.709. For the full responses regarding these comments, please refer to the discussion under §84.709(c).

Regarding the retail installment sales transaction report contained in §84.707(d)(1), several changes have been made in response to informal comments received. Most of the revisions provide additional options for compliance, while other revisions simply relate to formatting. First, subsection (d)(1) has been divided into subparagraphs (A) - (D) for clarity purposes. New §84.707(d)(1)(A) outlines the general requirements for the retail installment sales transaction report (as included in the proposal), and subparagraph (B) focuses on language relating to recordkeeping systems. After the proposed language stating that the report "can be maintained as a paper record or may be generated from an electronic system," the new phrase in §84.707(d)(1)(B) adds "or systems so long as the licensee can integrate the following information into a report." The remainder of the language in subparagraph (B) was included in the proposal.

Subparagraph (C) of §84.707(d)(1) is a new provision entitled "Dealer's Motor Vehicle Inventory Tax Statement option." In response to informal comments received, the rule now allows a licensee to satisfy the requirements of subsection (d)(1) by providing the monthly Vehicle Inventory Tax (VIT) Statements under the following conditions: (1) identify "which transactions were cash transactions and which were retail installment sales transactions," (2) identify "all transactions in which VIT was not charged or collected," and (3) provide the account numbers, if the licensee assigns account numbers. The agency believes that the VIT Statement option provides a reasonable and cost-efficient means of compliance.

Section §84.707(d)(1)(D) lists the required information for the retail installment sales transaction report, as contained in the proposal. Since the VIT Statement lists the date of sale as opposed to the date of contract, the phrase "or date of sale" has been added to the first listed item. The only other changes to the list of required information relate to formatting.

A formal comment was also submitted regarding §84.707(d)(1). The commenter believes that dealers do not currently maintain this information and that there is no business need for the retail installment sales transaction report, stating: "The problem with [the proposal] is that it presumes that a dealership has a 'retail installment sales transaction report.' This is simply not the case in the real world. There is no business need for a dealership to have a 'retail installment sales transaction report;' consequently, no such report is created at the dealership and no such report is made-either electronically or manually. . . . In addition, TADA requests that no requirement be made to create manually, a 'retail installment sales transaction report' as proposed in §84.707(d)(1)(B)." The commenter also believes that the requirements of §84.707(d)(1) go beyond the scope of the statute because "creating a report that is not currently made at the dealership or to modify another agency's form, goes beyond Texas Finance Code §348.517"

Concerning the maintenance of the retail installment transaction report information, from the agency's experience to date in performing examinations of franchised motor vehicle dealers that assign their contracts, almost all dealers had the ability to produce a list of every transaction made. With little effort, dealers have been able to identify which accounts are retail installment sales transactions. Also, the report does not have to be one running list. Many franchised dealers have been able to compile the required information from their daily reports.

Furthermore, the commission disagrees with the commenter regarding "business need," as there are numerous "business" reasons to maintain the information required by §84.707(d)(1). First, the information required by the rule may be used to identify the retail installment sales transactions made by the licensee and to which acceptance company those contracts have been assigned. As one franchised dealer may assign contracts to a multitude of acceptance companies, it is a good business practice to know how many contracts have been assigned and to which companies. Without this information, ensuring that proper payment is received would prove to be difficult. Second, in borrowing money, the information required by the rule could provide a proper accounting of accounts receivable if such accounts are used as security. Third, the information required by the rule could be vital if there is any recourse on the assigned contracts. The licensee may use the information required by the rule to understand the extent of its possible obligations and responsibilities to satisfy recourse requirements contained in its agreements

with acceptance companies (e.g., fulfill reserve amounts, buy back contracts, repossess vehicles). A fourth business need for the information required by the rule could be to engage in the sale of credit insurance, as the insurance company may need to know the business volume of retail installment sales transactions where credit insurance is eligible to be sold (prohibited on cash sales). And fifth, the information required by the rule could be essential for a licensee to monitor and evaluate its customer base. Concerning the commenter's request that licensees with manual recordkeeping systems be exempt from providing the information required by the rule, the commission disagrees as licensees with manual systems have just as much of a business need for this information as those with electronic systems. Therefore, as amended informally, the commission maintains the retail installment sales transaction report information as required by §84.707(d)(1) for this adoption. Parallel changes have been made to §84.708(e)(1).

The commission disagrees with the commenter regarding the scope of the statute, as the report required by §84.707(d)(1) clearly falls under the jurisdiction of the Office of Consumer Credit Commissioner (OCCC or agency). Texas Finance Code, §348.517 states: "A license holder shall maintain a record of each retail installment transaction made under this chapter as is necessary to enable the commissioner to determine whether the license holder is complying with this chapter." To determine compliance, the OCCC engages in an examination process that is based on non-statistical sampling of the licensee's records. This approach is the most appropriate in light of diversity of the motor vehicle licensees regulated by the OCCC and the need to keep the cost burden of examinations reasonable. The Methodology Manual of the State Auditors Office (SAO) describes non-statistical sampling as a purposeful sampling. The SAO Methodology Manual states that purposeful sampling can be an effective time saver when examiners know from prior experience where problems are most likely to develop. The OCCC has spent over five years developing its experience with the financing side of the motor vehicle industry. The OCCC considers several factors in conducting its regulatory examinations. The use of purposeful sampling allows examinations that accomplish the agency's regulatory duties and considers the expense to the licensee. The SAO Methodology Manual acknowledges these considerations in its statement about sampling size. In purposeful sampling, sample size depends on what the regulator wants to know, what is at stake, and what can be done within existing resource constraints. Sample size selection is determined by risk-based general factors and specific risk factors.

The non-statistical sampling of the licensee's records requires numerous factors to be taken into account. One of the factors is the volume of credit transactions in which the licensee has engaged. The OCCC cannot engage in proper sampling unless the total number of retail installment sales transactions for the licensee being examined is known.

Additionally, with regard to the VIT Statement option outlined above in §84.707(d)(1)(C), the commenter requests "that the information on Comptroller's Form 50-246 [VIT Statement] satisfy the agency's 'Retail Installment Sales Transaction Report' and that the dealership not be required to make additions or amendments to the [form]." The VIT Statement option is just that, an option. The VIT Statement is one method that a licensee may use to comply with §84.707. It is up to the individual licensee as to which option it selects to satisfy the requirements of §84.707(d)(1). The rule does not require a licensee to use the

VIT Statement option. The alternative to provide the VIT Statement with minor notations and supplementary information has been added to the rule to increase flexibility. The required additions to the VIT Statement are essential to provide the agency with the necessary information. The licensee may comply with the rule by using one of the other methods if making the additions to the VIT statement is too onerous. The commission declines the commenter's suggested amendments to §84.707(d)(1)(D).

Three commenters have concerns about the compliance provision contained within the introductory paragraph regarding the retail installment sales transaction file. The compliance provision is identical as proposed in the three rules, contained in §§84.707(d)(2), 84.708(e)(2), and 84.709(e)(2). Several issues are included within the comments on this provision, such as scope, maintenance of information as opposed to the ability to produce a report, federal law retention requirements, and documents required by other law not included in the rules. The issue regarding scope is addressed in the following paragraphs under §84.707. The remaining issues are contained in comments submitted regarding §84.709 and are addressed under that section.

All three commenters believe that the provision goes beyond the scope provided by Texas Finance Code, §348.517, which requires records "to determine whether the license holder is complying with *this chapter* [Chapter 348]." (emphasis added). These comments relate to the second sentence of the proposed compliance provision: "The retail installment sales transaction file must contain records and documents to evidence the licensee's compliance with applicable state and federal laws and regulations, including the Equal Credit Opportunity Act and the Truth in Lending Act." Two commenters request that the rule be clear in its focus on Chapter 348 and "that it is not attempting to delegate overlapping and potentially conflicting authority"

One commenter presents the following argument regarding the scope issue: "[T]he recordkeeping requirements of Chapter 348 of the Texas Finance Code do not apply to records of compliance with federal law, or of other state laws. Creditors do keep records of compliance with other state and federal laws, as required by the other state and federal laws. However, . . . the records of compliance with those other laws are kept in accordance with the laws and regulations which require and enforce them. Those laws are enforced by various governmental agencies, including the Federal Trade Commission. Thus, the reference in proposed section 7 TAC §84.709(2)(e) [sic] to documents pertaining to federal laws and state laws outside of the Texas Finance Code should be limited to apply only to the extent that those documents relate to compliance with Chapter 348."

The commission recognizes that, as creatures of government, state agencies only have the powers delegated to them by the legislature. The commission and agency always look to statutory authority when promulgating rules. The regulatory scheme of Texas Finance Code, Chapter 348, provides the OCCC suspension and revocation powers. Section 348.508(3) provides: "After notice and a hearing the commissioner may suspend or revoke a license if the commissioner finds that: . . . (3) a fact or condition exists that, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the commissioner's denial of the application." Simply stated, §348.508(3) authorizes the agency to suspend or revoke a license on the basis of current information, if that current information would have justified the denial of the original application. Often, the subsequently discovered "fact[s] or condition[s]" involve the violations of law outside of Chapter 348.

Chapter 348 is so interrelated with the Truth in Lending Act (TILA) that, in order to determine compliance with Chapter 348, it is impossible to segregate the two when conducting an examination. For example, if a licensee requires the sale of credit life and disability insurance as part of a retail installment sales contract, TILA requires that the premiums collected on that credit life and disability insurance be considered a finance charge, which must be disclosed to the retail buyer. Some licensees may incorporate into the retail installment sales contract the TILA notice stating that the credit insurance is required. Other licensees will use a separate insurance form to provide the TILA required insurance notice. Suppose a licensee uses a separate insurance form and the OCCC examiner only reviews the retail installment sales contract. In that situation, the additional finance charge may appear usurious since the examiner would not have knowledge of the required inclusion of the insurance premiums. In other words, without the essential knowledge of the required insurance notice under TILA, the examiner would have no way to determine whether the licensee is in compliance with Chapter 348.

Moreover, under Texas Finance Code, §348.009, the OCCC has specific statutory authority to review the type of disclosure issue outlined in the previous example. Section 348.009(a) states: "The disclosure requirements of 12 C.F.R. Part 226 (Regulation Z) adopted under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) and specifically 12 C.F.R. Section 226.18(f), regarding variable rate disclosures, apply according to their terms to retail installment transactions." Thus, the disclosure requirements of TILA apply to retail installment sales contracts under Chapter 348. It is the agency's position that a violation of a TILA disclosure requirement is a violation of Chapter 348. Consequently, such a violation of Chapter 348 would fall under the OCCC's statutory authority of "this chapter" as provided in §348.517.

In contrast to the prior TILA discussion, the commission acknowledges that the proposal's inclusion of references to the Equal Credit Opportunity Act (ECOA) in the record retention rules may reach beyond the scope of §348.517. The OCCC does have authority under §341.401 to enforce violations of discrimination and, by statute, is guided by the ECOA, regulations under and interpretations of that Act. This statutory authority is obviously not within Chapter 348; however, the terms of §341.401 apply to all of Title 4, which includes Chapter 348. Section 348.517 limits the licensee's responsibility to keep records necessary to show compliance with Chapter 348. Accordingly, in this adoption the commission has removed references to the ECOA that were contained in the following proposed provisions of all three rules: §§84.707(d)(2) and (d)(5), 84.708(e)(2) and (e)(7), and 84.709(e)(2) and (e)(7). Note that one ECOA citation reference has been added to each rule merely referring to the record retention requirements provided in the ECOA for adverse action records. The specific comment on this issue as well as the commission's response is provided under §84.707(e)(5).

In light of the previous discussion regarding the scope of the compliance provision, the commission disagrees with the commenters concerning TILA. Therefore, the commission has refined the wording of the compliance provision within each rule to better clarify the scope. The revisions intend to address and incorporate the commenters' concerns while also showing the tie between state and federal law and how the laws work together in the context of Chapter 348 retail installment sales transactions. The new compliance provision contained in the respective second sentences of §§84.707(d)(2), 84.708(e)(2),

and 84.709(e)(2) reads as follows for this adoption: "The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act."

Regarding other parallel changes made to §84.707(d)(2), please refer to the full discussion of other comments received under §84.709(e)(2).

In reference to proposed §84.707(d)(2)(A)(ii) concerning the buyer's order or purchase order, one commenter states: "[T]here is *no requirement in current law* that a license holder use a buyer's order or purchase order in a retail installment transaction and whether a buyer's order or purchase order is used is a licensee's business decision. In addition, because by statutory definition, the written computation is 'nonbinding' and 'preliminary,' the transaction is still subject to negotiation by the buyer and seller. Finally, the regulatory proposal goes beyond the statutory definition by requiring a buyer's order or purchase order to 'reflect a written computation of any additional amounts that may be included in the cash price of the vehicle and itemized charges.'" (emphasis in original). The commenter offers amendments for the buyer's order provision, including optional use language and including practically identical wording to that contained in Texas Finance Code, §348.001.

As cited by the commenter, §348.001 defines "buyer's order" as "a nonbinding, preliminary written computation relating to the purchase in a retail installment transaction of a motor vehicle that describes specifically: (A) the motor vehicle being purchased; and (B) each motor vehicle being traded in." The commenter states that the law does not require the use of a buyer's order and that its use is a "business decision." Certain retail installment sales transactions require the use of a buyer's order (e.g., if the retail buyer obtains outside financing). Also, under Texas Finance Code, §348.006(3), "the buyer's order *and* the retail installment contract must include . . . a statement of the amount of the documentary fee" (emphasis added). From the agency's experience with the motor vehicle industry, the vast majority of licensees have a standard practice of charging the documentary fee as part of their retail installment sales transactions, and hence, are required by statute to utilize a buyer's order to disclose that fee.

The statute references a "written computation." The statute requires a buyer's order to be "written" if it is legally required (e.g., to charge the documentary fee) or if a dealer uses a buyer's order in conjunction with a retail installment sales transaction. It follows that if a buyer's order is not required for a particular retail installment sales transaction, then the dealer does not have to create one. The agency's intent with the buyer's order provision is that if the licensee creates a buyer's order in conjunction with a retail installment sales transaction, the licensee must maintain a copy of that buyer's order. Thus, in order for the rule to fully reflect that intent, the introductory phrase "if prepared by the retail seller" has been added to §84.707(d)(2)(A)(ii) for this adoption.

Regarding the statutory term "computation," in order to compute something, a figure is necessary. To have a computation, more than one figure is needed. According to Webster's Third New International Dictionary (2002), "computation" is defined as "the act or action of computing." Webster's states that to "compute" means "to determine or ascertain esp. by mathematical means: arrive at an answer to or sum for." Hence, in §84.707(d)(2)(A)(ii)

the proposed language modifying "written computation" serves to explain that statutory term as contained in §348.001. The proposal categorizes the types of figures necessary to perform "the act or action of computing" and to "arrive at an answer to or sum for" the amounts under §348.001 "relating to the purchase in a retail installment transaction of a motor vehicle. . . ." To determine statutory compliance, the information on the buyer's order is essential in evaluating the cash price.

However, the commission does recognize the commenter's concern and believes that the buyer's order provision would benefit from more streamlined wording. Accordingly, the commission has decided to delete the following phrase from the buyer's order provision: "any additional amounts that may be included in." Therefore, for this adoption §84.707(d)(2)(A)(ii) now reads as follows: "if prepared by the retail seller, the purchase or buyer's order reflecting a written computation of the cash price of the vehicle and itemized charges, a description of the motor vehicle being purchased, and a description of each motor vehicle being traded in." The commission believes that this language provides better clarity on the minimum requirements for the buyer's order. Parallel changes have been made to §84.708(e)(2)(A)(ii).

Additionally, the phrase "unless otherwise specified" has been added to the end of the last sentence of §84.707(d)(2), which introduces the list of required records for the retail installment sales transaction file. The additional phrase serves to clarify that some records are only required if prepared (e.g., buyer's order) and that other records are only required for the particular situations outlined in certain accompanying subparagraphs. Parallel changes have been made to §84.708(e)(2) and §84.709(e)(2).

In response to informal comments, the documentation regarding inspection of used vehicles has been eliminated from §84.709, as holders do not receive the information. The agency was informed that licensees under §84.707 and §84.708 do receive and maintain this information. Thus, §84.707(d)(2)(K) has been added to reflect the accurate type of licensee that maintains the inspection information. A companion and parallel provision has been added to §84.708(e)(2)(O).

Two commenters request the deletion of the Buyers Guide provision proposed in §84.707(d)(2)(J)(iii). One commenter states: "[T]he Federal Trade Commission (FTC) does not require a dealership to maintain a copy of the 'Buyer's Guide.' The FTC requires the dealer to give the buyer of a used vehicle that the dealer sells, the 'Buyer's Guide;' however, there is no requirement that the dealership maintain a copy." (footnote omitted). In the FTC regulations, 16 C.F.R. §455.2 refers to the "Buyers Guide" as the "window form." The accompanying regulation cited by the commenter, §455.3, in addition to requiring that the Buyers Guide or window form be given to the buyer also states the following: "The information on the final version of the *window form is incorporated into the contract of sale* for each used vehicle you sell to a consumer. Information on the window form overrides any contrary provisions in the contract of sale." (emphasis added). Furthermore, Texas Finance Code, §348.101 states: "A retail installment contract may be more than one document."

In order to determine compliance with Chapter 348, the agency must have access to complete information regarding the retail installment sales contract between the retail buyer and the licensee. As incorporated into the retail installment sales contract by FTC regulation 16 C.F.R. §455.2, the Buyers Guide is a valid record to be maintained as part of the retail installment sales transaction file. Despite the fact that the Buyers Guide is a part of the transaction, the commission has decided to delete

§84.707(d)(2)(J)(iii) for this adoption. The Buyers Guide provision has also been deleted from §84.708 with the removal of §84.708(e)(2)(L)(iii). The agency plans to continue to study this issue as part of the examination process and may reconsider it in future rulemaking.

Concerning §84.707(d)(3), in response to informal comments, this provision regarding assignment information has been revised and reorganized to increase flexibility. First, the word "report" has been replaced with "information" in appropriate instances to reflect alternatives for licensees to provide the agency with access to assignment information. The reorganization involved separation into three subparagraphs: (A) required information, (B) electronic recordkeeping systems, and (C) manual recordkeeping systems. As acknowledged by one commenter, the manual provision "allows for those dealerships who maintain their records manually to maintain assignment information in each retail installment transaction file."

Two official comments were received as commenters have remaining concerns about the ability of licensees to produce the assignment information under §84.707(d)(3). One commenter states: "Some retail sellers may be able to compile a report from their current records showing where retail installment sales contracts have been assigned. Most dealers will not have this capability." The other commenter wishes to avoid "any additional expense if [a dealer's] software does not allow for the producing of an assignment report . . ." The latter commenter offers specific amended wording addressing the issue of additional programming costs.

Motor vehicle retail installment sales contracts may only be held by a licensee or an entity with a specific statutory exemption. Thus, assignment information is critical to determine compliance with Chapter 348. The agency must have access to information showing entities receiving assignment of Chapter 348 retail installment sales contracts to determine whether those entities have a legal right to hold those contracts.

The commission does, however, recognize that some licensees may be limited in how they can provide this information. The commission and agency always strive to reduce or eliminate additional programming costs of rules on licensees whenever possible. Therefore, the commission has decided to build further flexibility into this assignment information provision. Subparagraph (B) of §84.707(d)(3) regarding electronic recordkeeping systems has been revised for this adoption, as follows: "If a licensee is able to produce an assignment report containing the required information provided in subparagraph (A) of this paragraph electronically without any additional programming costs, the licensee must produce the report upon request. If the licensee's software program is unable to produce an assignment report containing the required information provided in subparagraph (A) of this paragraph, the licensee may maintain assignment information for each individual retail installment sales transaction in the retail installment sales transaction file. A licensee must be able to access assignment information for a specific transaction as requested by the commissioner's representative." In essence, if additional programming costs would result from producing an assignment report, a licensee with an electronic recordkeeping system will be able to provide information as allowed for those with manual systems. The revised provision incorporates much of the commenter's suggested rule text but has been amended to more correctly reflect the commenter's concerns regarding additional programming costs. In addition, parallel revisions have been made to §84.708(e)(4).

In response to informal comments received, parallel changes have been made to §84.707(d)(4) regarding general business and accounting records. Please refer to the full discussion under §84.709(e)(5).

Regarding §84.707(d)(5), two commenters express concerns about possible conflicts among the rule's adverse action requirements and the federal requirements found in the Fair Credit Reporting Act (FCRA) and the Equal Credit Opportunity Act (ECOA). One commenter states: "According to practitioners in the field those two statutes have problematic inconsistencies. The proposed OCCC rule would create further inconsistencies. For example, the proposed OCCC rule would require retail sellers to keep records 'where the applicant was denied credit.' This requirement is viewed as a misunderstanding and oversimplification of the two existing federal laws. . . . If OCCC insists on keeping the proposed rule, then just citing reference to the applicable federal record-keeping requirements should suffice."

The commission agrees that the scope of "adverse action" is much greater than the rule's proposed phrase of "where the applicant was denied credit." Also, as noted under the discussion regarding §84.707(d)(2), the commission has removed the specific ECOA language. The relevant deletion begins with the phrase "where the applicant was denied credit" and also deletes the entire second sentence as proposed. The commission has decided to revise the last sentence of the adverse action provision according to the commenter's last suggestion, i.e. a citation to the applicable federal requirements. Consequently, §84.707(d)(5) as revised for this adoption reads as follows: "Each licensee must maintain adverse action records regarding all applications relating to Texas Finance Code, Chapter 348 retail installment sales transactions. Adverse action records must be maintained according to the record retention requirements contained in Regulation B, Equal Credit Opportunity Act, 12 C.F.R. §202.12(b), as amended. The current retention periods are 25 months for consumer credit and 12 months for business credit." Note that the additional last sentence outlining the current retention requirements has been added in response to an informal comment to provide easy reference for licensees. Additionally, parallel changes have been made to §84.708(e)(7) and §84.709(e)(7).

Also, one commenter presents the following request concerning adverse action records: "TADA requests that [if] this agency reviews a license holder's adverse action records, that the review is not for compliance with federal law, but for maintenance of the records by the license holder." These recordkeeping rules only address the records or information that should be maintained, made accessible, or generated by motor vehicle sales finance dealers licensed by the OCCC. The rules as proposed do not address the examination process. Thus, the commenter's request is outside the scope of the proposal.

In reference to the retention requirement under §84.707(d)(6), one commenter states: "As there is a discrepancy between the statute and the rule proposal, TADA requests that the rule proposal track the statute and retain the proposed language which allows that final entry may be the date of the assignment if the licensee assigns the retail installment contract and makes no other entries on the account after assignment." The commenter references in the latter quoted phrase an addition regarding date of assignment being used as the final entry. As a result of informal comments, the following has been added as the second sentence of §84.707(d)(6): "For licensees who assign retail installment sales contracts, the final entry may be the date of the

assignment if the licensee makes no other entries on the account after the assignment."

Regarding the official comment concerning the request to track the statute, the commission and agency always strive to track statutory language where applicable. However, in this case, the statutory provision not included in the rule, i.e. "the third anniversary of the date the last payment was made on the retail installment transaction," does not apply to retail sellers who assign all of their contracts. Such retail sellers have no way to determine when the last payment was made on the contract. A particular contract may have continuing payments or may be paid off, but the holder does not provide that information to the retail seller. Therefore, the remaining statutory retention periods that do apply to retail sellers under this rule were contained in §84.707(d)(6) as proposed.

First, "four years from the date of the contract" is the retention period required under Texas Finance Code, §349.402, as well as the common law statute of limitations on contracts. Second, "two years from the date of the final entry made [on the contract] by the licensee" is found in §348.517, as cited by the commenter. By including these two applicable retention periods and not the inapplicable three year period, the rule serves to interpret the statute and clarify the relevant retention periods for the retail sellers governed by the rule. Accordingly, the commission declines the commenter's suggestion with regard to the three year period and retains the proposed first sentence of §84.707(d)(6) as follows: "All books and records required by this subsection must be available for inspection at any time by Office of Consumer Credit Commissioner staff, and must be retained for a period of four years from the date of the contract, two years from the date of the final entry made thereon by the licensee, whichever is later, or a different period of time if required by federal law."

Regarding other parallel changes made to §84.707(d)(6), please refer to the full discussion of other comments received under §84.709(e)(8).

Section 84.708 specifies the records that must be maintained or information that must be accessed for retail sellers collecting installments on motor vehicle retail installment sales contracts. The regulation requires the following records or information: a retail installment sales transaction report, a retail installment sales transaction file for each retail installment sales transaction, an account record for each retail installment sales contract (including payment and collection contact history), assignment information, general business and accounting records supporting each disbursement made by the licensee in connection with a retail installment sales transaction, insurance loss records (if the licensee negotiates or transacts insurance claims on behalf of the retail buyer), adverse action records, and repossession records. Additionally, a licensee must have the ability to search its files to access a list of open retail installment sales transactions. The rule is necessary to ensure that the licensee will be able to comply with the statutory requirement to maintain sufficient documentation for licensed retail sellers who collect on retail installment sales contracts.

As stated in the paragraph summarizing the comments received, the comment regarding §84.708 contains wide-ranging concerns about the rule without any comments as to specific provisions or suggested improvements. For example, the commenter states: "Our response here will not delve into the particulars of every section and subsection of §84.708; however, it is TIADA's contention that, in multiple instances, this rule exceeds the statutory authority granted to the agency in Texas Finance Code Chapter

348." As stated previously, the rules provide how a licensee can demonstrate compliance with Chapter 348. The rules contemplate, on almost every issue, multiple ways for the licensee to accomplish that statutory goal of demonstrating compliance. As evidenced throughout this adoption, several clarifications have been made to properly refine these rules and clearly define any statutory authority or scope issues.

The commenter also broadly states: "We remain concerned that these new rules add substantially to the regulatory burden imposed on small businesses without providing corresponding safeguards for the consumer." In the latter phrase regarding "safeguards for the consumer," the commenter is not stating the law correctly. The rulemaking provisions enacted by HB 3430 as contained in Texas Government Code, §2006.002 do not include any legal requirement to "provid[e] corresponding safeguards for the consumer." The commenter does not provide any information to demonstrate the supposed "burden imposed on small businesses." The commission has fulfilled the requirements of HB 3430 through the statements and analysis presented in the proposal as well as the continued revisions to numerous provisions contained throughout these rules resulting in increased flexibility and more efficient means for licensees to demonstrate compliance.

As soon as the agency has become aware of any potential adverse impact on small businesses, steps have been promptly taken to incorporate "several proposed methods of reducing the adverse impact" as required by Texas Government Code, §2006.002(c-1). For example, multiple changes have been made to the retail installment sales transaction report provisions to increase flexibility and provide alternatives for compliance. As outlined under §84.707(d)(1), the Dealer's Motor Vehicle Inventory Tax (VIT) Statement option has been added to assist small businesses in providing this information using the VIT Statement with minimal additions. Language has also been added to clarify that licensees with electronic recordkeeping systems can generate the report from integrating information from more than one system. Additionally, licensees have been able to compile their daily reports to provide the retail installment sales transaction report information. The assignment information provisions are another example of how the agency has minimized the adverse impact on small businesses. The proposal included an assignment report that was required to be maintained or produced by the licensee. While informal comments from holders indicated that their electronic systems are capable of producing the assignment report, representatives of small franchised and independent dealers alerted the agency to difficulty in fulfilling this requirement as proposed. Upon receiving this valuable feedback from the industry, several revisions have been made for this adoption to accommodate the needs of small businesses, many of which maintain their records using a manual recordkeeping system. Consequently, under the revised rules (§84.707 and §84.708) licensees with manual systems have the option to maintain their assignment information in the individual retail installment sales transaction files. Moreover, if a licensee's electronic recordkeeping system is unable to produce the required information without incurring any additional programming costs, the licensee may utilize the option provided for manual systems. A third example involves certain items that are not always used in conjunction with a retail installment sales transaction. Once the agency was informed of the optional nature of these items (e.g., buyer's order, condition report), the language "if prepared" was added to these provisions so that businesses would not experience increased costs for optional

items. Therefore, the recordkeeping rules as amended in this adoption "us[e] regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses," as required by §2006.002(c-1).

As the commenter does not provide any specific examples or suggestions regarding its general statements, the agency has decided to include responses to some of the commenter's informal comments that appear to relate to the broad statements in the official comment.

Possibly relating to small businesses, the commenter had informally raised concerns that the proposed rules seem to create new levels of records organization requirements, and that specialized formats were required. The agency has progressed through two proposals, several informal meetings with stakeholders, and numerous text revisions throughout the rules to properly reflect the rules' intent that the agency be provided access to the necessary information to show a licensee's compliance under Chapter 348. For example, the original language that licensees must "maintain" certain records has been revised to use phrasing focused on "access," "generate," and "produce," to offer many alternatives for compliance and resulting in increased flexibility of the rules. Moreover, a number of revisions have been made to accommodate the needs of licensees with manual recordkeeping systems. One particular provision at issue that the commenter stated informally would potentially add several hours of new work was the alphabetical search requirement contained in §84.708(d)(2). The agency reviewed this provision in conjunction with the experience of agency staff in conducting examinations. It was determined that some licensees may require an alternative manner to fulfill this provision. Thus, for this adoption the following new second sentence has been added to provide another method of compliance: "A licensee may comply with the alphabetical requirement by providing the commissioner's representative files by retail buyer name upon request by the commissioner's representative." Parallel changes have been made to §84.709(d)(2).

Concerning credit insurance records under §84.708(e)(2)(K), a narrowing list has been provided to cover claims "for credit life, credit accident and health, credit property, credit involuntary unemployment, collateral protection, or credit gap insurance." This clarification is intended to address informal concerns presented that may relate to a perceived burden that other insurance records were required. The list more specifically identifies the types of insurance records required, all of which the agency understands licensees to already maintain. Parallel changes have been made to §84.709(e)(2)(D).

In reference to §84.708(e)(3), the commenter presented an informal comment regarding possible duplication of information under this provision, which outlines the information required for the account record for each retail installment sales contract, and the information already included on the retail installment contract itself. The agency reviewed this provision in conjunction with the experience of agency staff in conducting examinations. It was determined that the provision needed to be revised to provide licensees with more efficient means for compliance. Thus, for this adoption the account record information has been separated into (A) "Required information" and new (B) "Recommended information" to prevent duplication. The only required items are: the account number, the date of contract, the name and address of the retail buyer, along with payment and collection contact history, and refunds from insurance or ancillary products (if any). The remaining items that had previously been listed as required

have been moved to new subparagraph (B) as recommended information. Proposed subparagraph (B) regarding corrective entries has been relettered as (C), and other appropriate formatting changes have been made. Parallel changes have been made to §84.709(e)(3).

Concerning collection contacts under §84.708(e)(3)(A)(vi), the commenter informally stated that the proposed language could potentially encompass innocuous information (e.g., What are your office hours?) and place a heavy burden on licensees. The commission agrees that the provision needs clarification to reflect the appropriate collection contacts to be recorded. Thus, to properly narrow the collection contacts provision, the following phrase has been added to both subclauses for this adoption: "in connection with the collection of amounts due under a motor vehicle retail installment sales contract." Parallel changes have been made to §84.709(e)(3)(A)(vi).

With regard to the scope of §348.517, the commenter informally noted that the Texas Business and Commerce Code does not require a "condition report" as required under §84.708(f)(2)(A). While the commenter is correct, the agency believes that condition reports are a highly valuable tool from a practical business standpoint. In light of the optional nature of the condition report, the following phrase had been added to the end of the provision: "if prepared by the licensee, the licensee's agent, or any independent contractor hired to perform the repossession." Parallel changes have been made to §84.709(f)(2)(A). Another issue that may relate to the commenter's scope concerns is what is referred to as the "waiver of the deficiency letter" contained in §84.708(f)(2)(C)(vii). There are certain triggering events under Texas Business and Commerce Code, §9.616 when this letter should be sent. In fact, the Texas State Bar has promulgated a form to be used for these situations. To provide better clarity in this provision, the phrase "if applicable" has been added to the end of §84.708(f)(2)(C)(vii) for this adoption. Parallel changes have been made to §84.709(f)(2)(C)(vii).

Additionally, the phrase "unless otherwise specified" has been added to the end of the last sentence of §84.708(f)(2), which introduces the list of required records for repossessions. The additional phrase serves to clarify that some records are only required if prepared (e.g., condition report) and that other records are only required for the particular situations outlined in certain accompanying subparagraphs. Parallel changes have been made to §84.709(f)(2).

The commenter also presented informal concerns about dealers with related finance companies being required to keep two separate sets of records, resulting in duplication of the same information. The agency cannot circumvent the statutory compliance required by both of these entities as individual licensees.

The following several paragraphs are notations of parallel changes made to provisions of §84.708 due to comments received under §84.707 and §84.709. These changes have been made, where applicable, to maintain consistency throughout the recordkeeping rules.

In response to informal comments received, §84.708(b) has been revised in order to clarify the records required for each retail installment sales transaction. Language has been added citing Chapter 348 of the Texas Finance Code. Please refer to the full comment response as provided in the discussion regarding §84.709(b).

Two new sentences have been added to subsection (c) of §84.708: one in response to an informal comment, and the

other in response to an official comment received regarding the corresponding subsection as contained in §84.709. For the full responses regarding these comments, please refer to the discussion under §84.709(c).

Regarding parallel changes made to the compliance provision contained in §84.708(e)(2), please refer to the full discussion of comments received under §84.707(d)(2) and §84.709(e)(2). Also regarding subsection (e)(2), the phrase "unless otherwise specified" has been added to the end of the last sentence. Please refer to the explanation provided under §84.707(d)(2).

Parallel changes have been made to the retail installment sales transaction report provision contained in §84.708(e)(1). Please refer to the full discussion of comments received under §84.707(d)(1).

In reference to the purchase or buyer's order provision in §84.708(e)(2)(A)(ii), parallel changes have been made. Please refer to the full discussion of the comment received under §84.707(d)(2)(A)(ii).

Parallel changes have been made to the credit insurance provisions contained in §84.708(e)(2)(K) and §84.708(e)(6). Please refer to the full discussion of informal comments received under §84.709(e)(2)(D).

The Buyers Guide provision has been deleted from §84.708 with the removal of §84.708(e)(2)(L)(iii). For the full response regarding the comment received, please refer to the discussion under §84.707(d)(2)(J)(iii).

A companion and parallel provision regarding inspection information has been added to §84.708(e)(2)(O). Please refer to the full discussion under §84.707(d)(2)(K).

Parallel changes have been made to §84.708(e)(3)(A)(v) regarding refunds of insurance charges or ancillary products. Please refer to the full discussion of informal comments received under §84.709(e)(3)(A)(v).

Concerning parallel changes made to the assignment information provision contained in §84.708(e)(4), please refer to the full discussion of comments received under §84.707(d)(3). Also, parallel changes have been made with the addition of §84.708(e)(4)(D) regarding securitization. For the full response regarding informal comments received, please refer to the discussion under §84.709(e)(4).

In response to informal comments received, parallel changes have been made to §84.708(e)(5) regarding general business and accounting records. Please refer to the full discussion under §84.709(e)(5).

In reference to the adverse action records provision in §84.708(e)(7), parallel changes have been made. Please refer to the full discussion of the comment received under §84.707(d)(5).

Parallel changes have been made to the retention provision contained in §84.708(e)(8). Please refer to the full discussion of comments received under §84.709(e)(8).

Regarding repossessed vehicles disposed of in public or private sales, parallel changes have been made to §84.708(f)(2)(C)(ii) and (iii). For the full response regarding informal comments received, please refer to the discussion under §84.709(f)(2)(C)(ii) and (iii).

Section 84.709 specifies the records that must be maintained or information that must be accessed for holders who are not

retail sellers that service or collect installments on motor vehicle retail installment sales contracts. The regulation requires the following records or information: a retail installment sales transaction report, a retail installment sales transaction file for each retail installment sales transaction, an account record for each retail installment sales contract (including payment and collection contact history), an assignment report, general business and accounting records supporting each disbursement made by the licensee in connection with a retail installment sales transaction, insurance loss records (if the licensee negotiates or transacts insurance claims on behalf of the retail buyer), adverse action records, and repossession records. Additionally, a licensee must have the ability to search its files to access a list of open retail installment sales transactions. The rule is necessary to ensure that the licensee will be able to comply with the statutory requirement to maintain sufficient documentation for licensed holders who are not retail sellers that service or collect on retail installment sales contracts.

For consistency within the subsections of these rules, parallel changes have been made in each respective subsection (b) in response to informal comments regarding §84.709(b). Section 84.709(b) has been revised in order to clarify the records required for each retail installment sales transaction. Language has been added to the first sentence citing Chapter 348, stating that records must be maintained with respect to "the licensee's compliance with Texas Finance Code, Chapter 348" The commission believes that this language is consistent with that contained in the revised compliance provision discussed earlier. Both subsection (b) and subsection (e)(2) of §84.709 cite specifically to "Chapter 348," i.e. "this chapter," as contained in §348.517. Please refer to the detailed discussion under §84.707(d)(2) concerning the interrelated nature of Chapter 348 and TILA.

Two new sentences have been added to subsection (c) of §84.709: one in response to an informal comment, and the other in response to a formal comment submitted and discussed in the following paragraph. The new second sentence of §84.709(c) reads as follows: "Licensees may maintain records on one or more recordkeeping systems, so long as the licensee is able to integrate records pertaining to an account into one or more reports as required by this section." In response to an informal comment, this new sentence serves to provide further clarification on the ability of licensees to integrate records from more than one type of recordkeeping system (e.g., two different electronic databases, or one electronic system with another imaged system). Throughout these rules, the agency has included numerous methods for licensees to achieve statutory compliance which has resulted in increased flexibility.

One commenter presents a concern about possible conflicts with federal record retention requirements. The commenter states: "The creditor does keep records of its compliance with other state and federal laws, as required by the other state and federal laws. However, the creditor keeps the records pertaining to those laws and regulations in the forms, manner, places, etc. required by those laws. Those forms, manner, places, etc. may be different than those described in the proposed rules." The commission acknowledges this issue and has added a sentence to the end of §84.709(c), as well as parallel changes to §84.707(c) and §84.708(c). This new third and final sentence clarifies that federal law will control with respect to any conflicts regarding record retention: "If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the con-

flict with the provisions of this section." Although the commission is not aware of any conflict at the present time, this additional sentence would address any potential conflict with federal law should one arise in the future.

Two commenters request that the §84.709(e)(2) requirement be fulfilled by the licensee producing a report, stating: "[I]t would be helpful for the section to state that the requirement to 'maintain a retail installment sales transaction file' is met by a computer report that includes all of the desired information, even though in its native form some of it may reside in various databases." The commission disagrees with the commenters, as the option of producing a report is not appropriate with regard to source documents. According to Webster's Third New International Dictionary (2002), to "report" is "to make written record or summary of." In conducting an examination, the OCC examiner needs to be able to review to a copy of the underlying source documents to determine compliance. These source documents include items such as the retail installment sales contract, buyer's order, credit application, disclosures provided, etc. A report "or summary of" the source documents would not demonstrate compliance with Chapter 348. However, in line with the flexibility built into these rules, an imaged copy of the source documents would be acceptable.

There may also be confusion as to the use of the term "file," which the rules continue to utilize in a flexible manner. According to the Merriam-Webster Online Dictionary, a "file" is (1) "a device (as a folder, case, or cabinet) by means of which papers are kept in order"; (2) "a collection of papers or publications usually arranged or classified"; (3) "a collection of related data records (as for a computer)"; and (4) "a complete collection of data (as text or a program) treated by a computer as a unit especially for purposes of input and output." The term "file" as used in the rules is intended to include all of these definitions. Thus, while the commission declines to adopt the commenter's suggestion, some clarifying language has been added to the respective first sentences of §84.709(e)(2), as well as §84.707(d)(2), and §84.708(e)(2). The new phrases relate to the acceptance of "a paper or imaged copy" and the option for a licensee to either maintain "or be able to produce the same information within a reasonable amount of time."

Two commenters have concerns about documents required by other law not included in the rules. One commenter states: "The section should also be clarified to make clear that the reference to documents relating to other state and federal laws refers to those listed in section 84.709(e)(2), i.e., those listed in [subparagraphs] (A) - (G) of that section, as there are numerous other documents relating to compliance with federal law and other state laws, many of which have no relevance to Chapter 348." These rules outline recordkeeping requirements with respect to "the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act," as stated in the revised compliance provision outlined earlier. The rules do not intend to provide an all-encompassing or inclusive list of every single record that must be maintained by licensees under any law. The commission declines the commenter's suggestion as unnecessary and outside the intended purpose of the rules.

In response to informal comments received, two provisions have been deleted from §84.709(e)(2) as holders under this rule do not receive the information. The two deleted provisions are proposed §84.709(e)(2)(C) regarding application for certificate of ti-

tle and §84.709(e)(2)(D) regarding inspection information. The provision concerning inspection information has been properly placed in §84.707 and §84.708. Please refer to the discussion under §84.707(d)(2)(K). In addition, the remaining subparagraphs have been relettered accordingly.

Regarding credit insurance under §84.709(e)(2)(D), the proposed language has been clarified in response to informal comments received. In order to properly characterize the insurance records that should be maintained by holders, the verb "facilitate" has been replaced with the verb "transact" in all occurrences throughout §84.709(e)(2) and (e)(6). Also, the phrase "to the extent received by the licensee" has been added to further clarify the supplemental insurance records required. Parallel changes have been made to §84.708(e)(2)(K) and §84.708(e)(6).

In response to informal comments received, the proposed language has been revised in §84.709(e)(3)(A)(v) regarding refunds of insurance charges or ancillary products. The verbs "substantiating" and "ensuring" have been removed and replaced with language that more accurately reflects the standard of "providing" sufficient documentation "correctly applying" refunds. Parallel changes have been made to §84.708(e)(3)(A)(v).

Regarding securitization under §84.709(e)(4), the following provision has been added in response to informal comments to clarify that certain information is not required as part of the assignment report: "If the servicing rights are retained by the licensee, then the licensee is not required to include in the assignment report retail installment sales transactions that were assigned to a legal entity as part of a securitization agreement. A licensee is also not required to include in the assignment report retail installment sales transactions that have been pledged as collateral for a bona fide financing arrangement to the licensee." Parallel changes have been made to §84.708(e)(4)(D).

To address informal comments received, the following has been added as the new last sentence of §84.709(e)(5) regarding general business and accounting records: "The licensee is not required to produce information protected under the attorney-client privilege or work product privilege." Parallel changes have been made to §84.707(d)(4) and §84.708(e)(5).

With regard to the retention period under §84.709(e)(8), minor revisions have been made in response to informal comments received. The phrases "be able to produce or access," "within a reasonable time," and "available or accessible" have been added to the second and third sentences to further increase the flexibility of the rules. Parallel changes have been made to §84.707(d)(6) and §84.708(e)(8).

In response to informal comments received, revisions have been made to §84.709(f)(2)(C)(ii) and (iii) concerning repossessed vehicles disposed of in public or private sales. The revisions better clarify the necessary evidence to determine that the proper "type or manner of" sale was conducted. Parallel changes have been made to §84.708(f)(2)(C)(ii) and (iii).

The following several paragraphs are notations of parallel changes made to provisions of §84.709 due to comments received under §84.707 and §84.708. These changes have been made, where applicable, to maintain consistency throughout the recordkeeping rules.

Regarding the alphabetical search requirement, parallel changes have been made to §84.709(d)(2). For the full re-

sponse regarding the informal comment received, please refer to the discussion under §84.708(d)(2).

In reference to parallel changes made to the compliance provision in §84.709(e)(2), please refer to the full discussion of other comments received under §84.707(d)(2). Also regarding subsection (e)(2), the phrase "unless otherwise specified" has been added to the end of the last sentence. Please refer to the explanation provided under §84.707(d)(2).

Concerning credit insurance records, parallel changes have been made to §84.709(e)(2)(D). For the full response regarding the informal comment received, please refer to the discussion under §84.708(e)(2)(K).

Parallel changes have been made to §84.709(e)(3), which outlines the account records required for each retail installment sales contract. In addition, parallel changes have been made to §84.709(e)(3)(A)(vi) regarding collection contacts. Please refer to the full discussion of the informal comments received under §84.708(e)(3).

In reference to the adverse action records provision in §84.709(e)(7), parallel changes have been made. Please refer to the full discussion of the comment received under §84.707(d)(5).

Regarding repossessions under §84.709(f), specifically the provisions relating to condition reports and waiver of deficiency letters, parallel changes have been made. Please refer to the full discussion of the informal comments received under §84.708(f).

Additionally, one commenter offers the following general suggestion regarding §84.709: "Lenders should have an affirmative duty to keep a record of all due diligence the lender conducted in accepting assignment of the contract." The commenter then provides examples regarding stipulations, verification of credit information, and contacting employers. For this adoption, adding a provision of this nature would be a substantive change that the commission is unable to consider at this time. However, the commission acknowledges receipt of this comment and will consider it for future rulemaking.

These new sections are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the Finance Commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

These rules affect Texas Finance Code, Chapter 348.

§84.707. Files and Records Required (Retail Sellers Assigning Retail Installment Sales Contracts).

(a) Applicability. The recordkeeping requirements of this section apply to retail sellers that immediately assign or transfer all retail installment sales contracts to another authorized creditor. If a retail seller collects any installments, excluding downpayments, on a retail installment sales contract, the retail seller must comply with the recordkeeping requirements established under §84.708 of this title (relating to Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts)).

(b) Records required for each retail installment sales transaction. Each licensee must maintain records with respect to the licensee's compliance with Texas Finance Code, Chapter 348 for each motor vehicle retail installment sales contract made, acquired, serviced, or held under Chapter 348 and make those records available for examination.

(c) Recordkeeping systems. The records required by this section may be maintained by using either a legible paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. Licensees may maintain records on one or more recordkeeping systems, so long as the licensee is able to integrate records pertaining to an account into one or more reports as required by this section. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(d) Records required.

(1) Retail installment sales transaction report.

(A) General requirements. Each licensee must maintain records sufficient to produce a retail installment sales transaction report that contains a listing of each Texas Finance Code, Chapter 348 retail installment sales contract entered into by the licensee. The report is only required to include those retail installment sales contracts that are subject to the record retention period of paragraph (6) of this subsection.

(B) Recordkeeping systems. The retail installment sales transaction report can be maintained either as a paper record or may be generated from an electronic system or systems so long as the licensee can integrate the following information into a report. If the retail installment sales transaction report is maintained under a manual recordkeeping system, the retail installment sales transaction report must be updated within a reasonable time from the date the contract is entered into by the licensee.

(C) Dealer's Motor Vehicle Inventory Tax Statement option.

(i) A licensee may utilize a copy of the Dealer's Motor Vehicle Inventory Tax Statement (VIT Statement) submitted to the Office of the Comptroller of Public Accounts to satisfy the requirements of this paragraph if the following two conditions are met when the VIT Statement is provided to the commissioner's representative:

(I) on a copy of the submitted VIT Statement, the licensee identifies (e.g., highlights, marks with abbreviations) which transactions were cash transactions and which were retail installment sales transactions; and

(II) the licensee supplements the VIT Statement with the identification of all transactions in which VIT was not charged or collected.

(ii) A licensee who assigns account numbers and utilizes the Dealer's Motor Vehicle Inventory Tax Statement option must provide the account numbers for all retail installment sales transactions contained in the VIT Statement.

(D) Required information. A retail installment sales transaction report must contain the following information:

(i) the date of contract or date of sale (day, month, and year);

(ii) the retail buyer's name(s);

(iii) a method of identifying the vehicle, such as the last six (6) digits of the vehicle identification number or the stock number; and

(iv) the account number, if the retail seller assigns an account number.

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) for all retail installment sales transactions:

(i) the retail installment sales contract signed by the retail buyer and the retail seller as required by Texas Finance Code, §348.101;

(ii) if prepared by the retail seller, the purchase or buyer's order reflecting a written computation of the cash price of the vehicle and itemized charges, a description of the motor vehicle being purchased, and a description of each motor vehicle being traded in;

(iii) the credit application and any other written or recorded information used in evaluating the application;

(iv) the Texas Department of Transportation's Title Application Receipt (Form VTR-500-RTS), Tax Assessor's Tax Collector's Receipt for Title Application/Registration/Motor Vehicle Tax handwritten receipt (Form 31-RTS), or similar document evidencing the disbursement of the sales tax, and fees for license, title, and registration of the vehicle;

(v) copies of other agreements or disclosures signed by the retail buyer applicable to the retail installment sales transaction; and

(vi) any records applicable to the retail installment transaction outlined by subparagraphs (B) - (J) of this paragraph.

(B) for a vehicle titled in Texas, a copy of the completed Texas Department of Transportation/Comptroller of Public Accounts' Application for Texas Certificate of Title (Form 130-U) signed by the retail buyer and seller that was filed with the appropriate county tax assessor-collector.

(C) for a vehicle titled outside of Texas, a copy of the application for certificate of title for the buyer or the properly assigned evidence of ownership to the buyer including the Comptroller of Public Accounts' Texas Motor Vehicle Sales Tax Exemption Certificate (Form 14-312).

(D) for a retail installment sales transaction in which a power of attorney is necessary to transfer title to the buyer, a copy of the Texas Department of Transportation's Power of Attorney to Transfer a Motor Vehicle (Form VTR-271) or any other similar document used as a power of attorney.

(E) for a retail installment sales transaction in which the retail buyer elects to have the vehicle registered in another county as permitted by Texas Transportation Code, §501.0234, a completed copy of the Texas Department of Transportation's County of Title Issuance form (Form VTR-136) signed by the retail buyer.

(F) for a retail installment sales transaction involving a downpayment, a copy of any document relating to the downpayment including:

(i) receipts for cash downpayments;

(ii) promissory notes or other documents evidencing the retail buyer's agreement to pay the cash downpayment over time;

(iii) documents or forms signed by the retail buyer relating to a manufacturer's or distributor's rebate as permitted by the Texas Finance Code, §348.404(a); and

(iv) documents or forms evidencing the payoff of any trade-in vehicle shown on the retail installment sales contract.

(G) for a retail installment sales transaction involving the disbursement of funds for money advanced pursuant to Texas Finance Code, §348.404(b) and (c), a copy of any document relating to the disbursement of funds for money advanced.

(H) for a retail installment sales transaction in which the licensee issues a certificate of insurance regarding insurance policies issued by or through the licensee in connection with the retail installment sales transaction, copies of the certificates of insurance.

(I) for a retail installment sales transaction in which the licensee issues a certificate of coverage regarding ancillary products issued by or through the licensee in connection with the retail installment sales transaction, records of the ancillary products (motor vehicle theft protection plans, service contracts, maintenance agreements, etc.) including all certificates of coverage.

(J) for a retail installment sales transaction where separate disclosures are required by federal or state law including the following:

(i) a transaction where disclosures required by the Truth in Lending Act are not incorporated into the text of the retail installment sales contract and the credit was extended for primarily for personal, family, or household purposes, a copy of the Truth in Lending statement required by Regulation Z, Truth in Lending, 12 C.F.R. §226.18, *et seq.*;

(ii) a transaction involving a cosigner, the notice to cosigner required by the Federal Trade Commission's Credit Practices Trade regulation, 16 C.F.R. §444.3.

(K) for a retail installment sales contract that has an itemized charge for the inspection of a used motor vehicle, access to a copy of the work order, inspection receipt, or other verifiable evidence that reflects that the inspection was performed including the date and cost of the inspection.

(3) Assignment information.

(A) Required information. Assignment information must cover any Texas Finance Code, Chapter 348 retail installment sales contract made by or acquired by the licensee that is assigned from its licensed or registered location. The assignment information must show the name of the retail buyer, the account number or other unique number given to the retail buyer, the date of assignment, and the name and address to which the accounts are assigned.

(B) Electronic recordkeeping systems. If a licensee is able to produce an assignment report containing the required information provided in subparagraph (A) of this paragraph electronically without any additional programming costs, the licensee must produce the report upon request. If the licensee's software programs are unable to produce an assignment report containing the required information provided in subparagraph (A) of this paragraph, the licensee may main-

tain assignment information for each individual retail installment sales transaction in the retail installment sales transaction file. A licensee must be able to access assignment information for a specific transaction as requested by the commissioner's representative.

(C) Manual recordkeeping systems. If a licensee is not able to produce an assignment report as provided in subparagraph (B) of this paragraph, the licensee may maintain assignment information for each individual retail installment sales transaction in the retail installment sales transaction file. A licensee must be able to access assignment information for a specific transaction as requested by the commissioner's representative.

(4) General business and accounting records. General business and accounting records concerning retail installment sales transactions must be maintained. The licensee is not required to produce information protected under the attorney-client privilege or work product privilege. The business and accounting records must include receipts, documents, or other records for each disbursement made by the licensee at the retail buyer's direction or request, on his behalf, or for his benefit, that is charged to the retail buyer, including:

(A) Comptroller of Public Accounts' Dealer Motor Vehicle Inventory Tax Statement (Form 50-246); and

(B) Comptroller of Public Accounts' Texas Motor Vehicle Seller-Financed Sales Tax Report (Form 14-117).

(5) Adverse action records. Each licensee must maintain adverse action records regarding all applications relating to Texas Finance Code, Chapter 348 retail installment sales transactions. Adverse action records must be maintained according to the record retention requirements contained in Regulation B, Equal Credit Opportunity Act, 12 C.F.R. §202.12(b), as amended. The current retention periods are 25 months for consumer credit and 12 months for business credit.

(6) Retention and availability of records. All books and records required by this subsection must be available for inspection at any time by Office of Consumer Credit Commissioner staff, and must be retained for a period of four years from the date of the contract, two years from the date of the final entry made thereon by the licensee, whichever is later, or a different period of time if required by federal law. For licensees who assign retail installment sales contracts, the final entry may be the date of the assignment if the licensee makes no other entries on the account after the assignment. Upon notification of an examination pursuant to Texas Finance Code, §348.514(f), the licensee must be able to produce or access required books and records within a reasonable time at the licensed location or registered office specified on the license. The records required by this subsection must be available or accessible at an office in the state designated by the licensee except when the retail installment sales transactions are transferred under an agreement which gives the commissioner access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

§84.708. *Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts).*

(a) Applicability. The recordkeeping requirements of this section apply to retail sellers that service or collect installments on retail installment sales contracts.

(b) Records required for each retail installment sales transaction. Each licensee must maintain records with respect to the licensee's compliance with Texas Finance Code, Chapter 348 for each motor ve-

hicle retail installment sales contract made, acquired, serviced, or held under Chapter 348 and make those records available for examination.

(c) Recordkeeping systems. The records required by this section may be maintained by using either a legible paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. Licensees may maintain records on one or more recordkeeping systems, so long as the licensee is able to integrate records pertaining to an account into one or more reports as required by this section. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(d) Record search requirements.

(1) Open retail installment sales transactions. A licensee must be able to access or produce a list of all open retail installment sales transactions. If the list of open transactions is accessed through an electronic system, the licensee must be able to generate a separate report of open transactions. Alternatively, a licensee may provide a list containing open and closed retail installment sales transactions as long as the open transactions are designated as "open."

(2) Alphabetical search. A licensee must be able to access records in alphabetical order by retail buyer name for open and closed transactions during the record retention period required by subsection (e)(8) of this section. A licensee may comply with the alphabetical requirement by providing the commissioner's representative files by retail buyer name upon request by the commissioner's representative.

(e) Records required.

(1) Retail installment sales transaction report.

(A) General requirements. Each licensee must maintain records sufficient to produce a retail installment sales transaction report that contains a listing of each Texas Finance Code, Chapter 348 retail installment sales contract made or acquired by the licensee. The report is only required to include those retail installment sales contracts that are subject to the record retention period of paragraph (8) of this subsection.

(B) Recordkeeping systems. The retail installment sales transaction report can be maintained either as a paper record or may be generated from an electronic system or systems so long as the licensee can integrate the following information into a report. If the retail installment sales transaction report is maintained under a manual recordkeeping system, the retail installment sales transaction report must be updated within a reasonable time from the date the contract is made or acquired.

(C) Dealer's Motor Vehicle Inventory Tax Statement option.

(i) A licensee may utilize a copy of the Dealer's Motor Vehicle Inventory Tax Statement (VIT Statement) submitted to the Office of the Comptroller of Public Accounts to satisfy the requirements of this paragraph if the following two conditions are met when the VIT Statement is provided to the commissioner's representative:

(I) on a copy of the submitted VIT Statement, the licensee identifies (e.g., highlights, marks with abbreviations) which transactions were cash transactions and which were retail installment sales transactions; and

(II) the licensee supplements the VIT Statement with the identification of all transactions in which VIT was not charged or collected.

(ii) A licensee who assigns account numbers and utilizes the Dealer's Motor Vehicle Inventory Tax Statement option must provide the account numbers for all retail installment sales transactions contained in the VIT Statement.

(D) Required information. A retail installment sales transaction report must contain the following information:

(i) the date of contract or date of sale (day, month, and year);

(ii) the retail buyer's name(s);

(iii) a method of identifying the vehicle, such as the last six (6) digits of the vehicle identification number or the stock number; and

(iv) the account number.

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) for all retail installment sales transactions:

(i) the retail installment sales contract signed by the retail buyer and the retail seller as required by Texas Finance Code, §348.101;

(ii) if prepared by the retail seller, the purchase or buyer's order reflecting a written computation of the cash price of the vehicle and itemized charges, a description of the motor vehicle being purchased, and a description of each motor vehicle being traded in;

(iii) the credit application and any other written or recorded information used in evaluating the application;

(iv) the original certificate of title to the vehicle, a certified copy of the negotiable certificate of title, or a copy of the front and back of either the original or certified copy of the title;

(v) the Texas Department of Transportation's Title Application Receipt (Form VTR-500-RTS), Tax Assessor's Tax Collector's Receipt for Title Application/Registration/Motor Vehicle Tax handwritten receipt (Form 31-RTS), or similar document evidencing the disbursement of the sales tax, and fees for license, title, and registration of the vehicle;

(vi) copies of other agreements or disclosures signed by the retail buyer applicable to the retail installment sales transaction; and

(vii) any records applicable to the retail installment transaction outlined by subparagraphs (B) - (N) of this paragraph.

(B) for a vehicle titled in Texas, a copy of the completed Texas Department of Transportation/Comptroller of Public Accounts' Application for Texas Certificate of Title (Form 130-U) signed by the retail buyer and seller that was filed with the appropriate county tax assessor-collector.

(C) for a vehicle titled outside of Texas, a copy of the application for certificate of title for the buyer or the properly assigned evidence of ownership to the buyer including the Comptroller of Public Accounts' Texas Motor Vehicle Sales Tax Exemption Certificate (Form 14-312).

(D) for a retail installment sales transaction in which a power of attorney is necessary to transfer title to the buyer, a copy of the Texas Department of Transportation's Power of Attorney to Transfer a Motor Vehicle (Form VTR-271) or any other similar document used as a power of attorney.

(E) for a retail installment sales transaction in which the retail buyer elects to have the vehicle registered in another county as permitted by Texas Transportation Code, §501.0234, a completed copy of the Texas Department of Transportation's County of Title Issuance form (Form VTR-136) signed by the retail buyer.

(F) for a retail installment sales transaction involving a downpayment, a copy of any record or document relating to the downpayment including:

- (i) receipts for cash downpayments;
- (ii) promissory notes or other documents evidencing the retail buyer's agreement to pay the cash downpayment over time;
- (iii) documents or forms signed by the retail buyer relating to a manufacturer's or distributor's rebate as permitted by the Texas Finance Code, §348.404(a); and
- (iv) documents or forms evidencing the payoff of any trade-in vehicle shown on the retail installment sales contract.

(G) for a retail installment sales contract that has an itemized charge for the inspection of the vehicle, a copy of the work order, inspection receipt, or other verifiable evidence that reflects that the inspection was performed including the date and cost of the inspection.

(H) for a retail installment sales transaction involving the disbursement of funds for money advanced pursuant to Texas Finance Code, §348.404(b) and (c), a copy of any document, form, or agreement relating to the disbursement of funds for money advanced.

(I) for a retail installment sales transaction in which the licensee issues a certificate of insurance regarding insurance policies issued by or through the licensee in connection with the retail installment sales transaction, copies of the certificates of insurance.

(J) for a retail installment sales transaction in which the licensee issues a certificate of coverage regarding ancillary products issued by or through the licensee in connection with the retail installment sales transaction, records of the ancillary products (motor vehicle theft protection plans, service contracts, maintenance agreements, etc.) including all certificates of coverage.

(K) for a retail installment sales transaction involving insurance claims for credit life, credit accident and health, credit property, credit involuntary unemployment, collateral protection, or credit gap insurance:

(i) if the licensee does not negotiate or transact insurance claims on behalf of the retail buyer, records are not required to be maintained under this subparagraph.

(ii) if the licensee negotiates or transacts insurance claims on behalf of the retail buyer, supplemental insurance records, to the extent received by the licensee, supporting the settlement or denials of claims reported in the insurance loss records provided by paragraph (6) of this subsection including:

(I) Credit life insurance claims. The supplemental insurance records for credit life insurance claims must include the death certificate or other written records relating to the death of the retail buyer; proof of loss or claim form that discloses the amount of indebtedness at the time of death; check copies or electronic payment receipts that reflect the gross amount of the claim paid, including the amount of insurance benefits paid to beneficiaries other than the licensee which is in excess of the net amount necessary to pay the indebtedness; and the amount that is paid to beneficiaries other than the licensee.

(II) Credit accident and health insurance claims. The supplemental insurance records for credit accident and health insurance claims must include any written records relating to the disability, including statements from the physician, employer, and retail buyer; the proof of loss or claim form filed by the retail buyer; and copies of the checks or electronic payment receipts reflecting disability payments paid by the insurance carrier.

(III) Credit involuntary unemployment insurance claims. The supplemental insurance records for credit involuntary unemployment insurance claims must include any written document relating to the termination, layoff, or dismissal of the retail buyer; the proof of loss or claim form filed by the retail buyer; copies of the checks or electronic payment receipts reflecting the payment of the claim by the insurance carrier; and any other pertinent written record relating to the involuntary unemployment insurance claim.

(IV) Collateral protection insurance claims. The supplemental insurance records for collateral protection insurance claims must include the law enforcement report, fire department report, or other written record reflecting the loss or destruction of any covered motor vehicle; the proof of loss or claim form filed by the retail buyer; copies of the checks or electronic payment receipts reflecting the payment of the claim by the insurance carrier; and any other pertinent written record relating to the collateral protection insurance claim.

(V) Credit gap insurance claims. The supplemental insurance records for credit gap insurance claims must include the gap insurance claim form; proof of loss and settlement check from the retail buyer's basic comprehensive, collision, or uninsured/underinsured policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle; documents that provide verification of the retail buyer's primary insurance deductible; if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss of the motor vehicle; if the accident was not investigated by a law enforcement officer, a copy of the Texas Department of Public Safety's "Driver's Accident Report" (Form ST-2) filed in connection with the total loss of the motor vehicle; and copies of the checks reflecting the settlement amount paid by the licensee for the gap insurance claim.

(L) for a retail installment sales transaction where separate disclosures are required by federal or state law including the following:

(i) a transaction where disclosures required by the Truth in Lending Act are not incorporated into the text of the retail installment sales contract and the credit was extended for primarily for personal, family, or household purposes, a copy of the Truth in Lending statement required by Regulation Z, Truth in Lending, 12 C.F.R. §226.18, *et seq.*;

(ii) a transaction involving a cosigner, the notice to cosigner required by the Federal Trade Commission's Credit Practices Trade regulation, 16 C.F.R. §444.3.

(M) for a retail installment sales transaction that has been repaid in full, evidence of the discharge or release of lien as prescribed by 43 TAC, §17.3(h) (relating to Motor Vehicle Certificates of Title).

(N) for a retail installment sales transaction involving a repossession, the records required by subsection (f) of this section.

(O) for a retail installment sales contract that has an itemized charge for the inspection of a used motor vehicle, access to a copy of the work order, inspection receipt, or other verifiable evidence that reflects that the inspection was performed including the date and cost of the inspection.

(3) Account record for each retail installment sales contract (including payment and collection contact history). A separate paper, or an electronic record, must be maintained covering each retail installment sales contract. The paper or electronic account record must be readily available by reference to either a retail buyer's name or account number.

(A) Required information. The account record for each retail installment sales contract must contain at least the following information, unless stated otherwise:

(i) account number as recorded in the retail installment sales transaction report;

(ii) date of contract;

(iii) name and address of retail buyer;

(iv) payment history information:

(I) itemized payment entries showing date payment received; dual postings are acceptable if date of posting is other than date of receipt;

(II) if requested during an examination or investigation, a payoff amount that denotes amounts applied to principal, time price differential, default, deferment, or other authorized charges;

(v) for a retail installment sales contract where the licensee receives a refund of insurance charges or authorized ancillary products, a licensee is responsible for maintaining sufficient documentation of any refund including final entries and is also responsible for providing refunds to the retail buyer or correctly applying refunds to the retail buyer's account. Refund amounts must be itemized to show:

(I) time price differential refunded, if any;

(II) the amount of any insurance charges refunded;

(III) the amount of any authorized ancillary products charges refunded;

(vi) collection contact history, including a written record of:

(I) all collection contacts made by a licensee with the retail buyer or any other person in connection with the collection of amounts due under a motor vehicle retail installment sales contract;

(II) all collection contacts made by the retail buyer with the licensee in connection with the collection of amounts due under a motor vehicle retail installment sales contract;

(III) for the collection contacts in subclauses (I) and (II) of this clause, the written record must include the date, method of contact, contacted party, person initiating the contact, and a summary of the contact;

(IV) copies of individual collection notices or letters or references to standard collection letters sent to the retail buyer.

(B) Recommended information. In addition to the required information under subparagraph (A) of this paragraph, it is recommended that the account record for each retail installment sales contract contain the following information:

(i) retail installment sales contract payment schedule and terms itemized to show:

(I) number of installments;

(II) due date of installments;

(III) amount of each installment; and

(IV) maturity date;

(ii) telephone number of retail buyer;

(iii) names and addresses of co-retail buyer or other obligors, if any;

(iv) amount financed;

(v) total time price differential charge;

(vi) total of payments;

(vii) amount of premium charges for insurance products.

(C) Corrective entries. A licensee may make corrective entries to the account record for each retail installment sales contract if the corrective entry is justified. A licensee must maintain the reason and supporting documentation for each corrective entry made to the account record. The reason for the corrective entry may be recorded in the collection contact history of the account record. The supporting documentation justifying the corrective entry can be maintained in the individual account record for each retail installment sales contract or properly stored and indexed in a licensee's optically imaged record-keeping system. If a licensee manually maintains the account record, the licensee must properly correct an improper entry by drawing a single line through the improper entry and entering the correct information above or below the improper entry. No erasures or other obliterations may be made on the payments received or collection contact history section of the manual account record for each retail installment sales contract.

(4) Assignment information.

(A) Required information. Assignment information must cover any Texas Finance Code, Chapter 348 retail installment sales contract made by or acquired by the licensee that is assigned from its licensed or registered location. The assignment information must show the name of the retail buyer, the account number or other unique number given to the retail buyer, the date of assignment, and the name and address to which the accounts are assigned.

(B) Electronic recordkeeping systems. If a licensee is able to produce an assignment report containing the required information provided in subparagraph (A) of this paragraph electronically without any additional programming costs, the licensee must produce the report upon request. If the licensee's software programs are unable to produce an assignment report containing the required information provided in subparagraph (A) of this paragraph, the licensee may maintain assignment information for each individual retail installment sales transaction in the retail installment sales transaction file. A licensee must be able to access assignment information for a specific transaction as requested by the commissioner's representative.

(C) Manual recordkeeping systems. If a licensee is not able to produce an assignment report as provided in subparagraph (B) of this paragraph, the licensee may maintain assignment information for each individual retail installment sales transaction in the retail installment sales transaction file. A licensee must be able to access assignment information for a specific transaction as requested by the commissioner's representative.

(D) Securitization or financing exception. If the servicing rights are retained by the licensee, then the licensee is not required to include in the assignment report retail installment sales transactions that were assigned to a legal entity as part of a securitization agreement. A licensee is also not required to include in the assignment report retail installment sales transactions that have been pledged as collateral for a bona fide financing arrangement to the licensee.

(5) General business and accounting records. General business and accounting records concerning retail installment sales transactions must be maintained. The licensee is not required to produce information protected under the attorney-client privilege or work product privilege. The business and accounting records must include receipts, documents, or other records for each disbursement made by the licensee at the retail buyer's direction or request, on his behalf, or for his benefit, that is charged to the retail buyer, including:

(A) Comptroller of Public Accounts' Dealer Motor Vehicle Inventory Tax Statement (Form 50-246);

(B) Comptroller of Public Accounts' Texas Motor Vehicle Seller-Financed Sales Tax Report (Form 14-117); and

(C) repossession, sequestration, disposition, or legal fees relating to repossession, sequestration, or disposition.

(6) Insurance loss records. Each licensee who negotiates or transacts the filing of insurance claims must maintain a register or be able to generate a report, paper or electronic, reflecting information to the extent received by the licensee on credit life, credit accident and health, credit property, credit involuntary unemployment, and single-interest insurance claims whether paid or denied by the insurance carrier. If the reason for the denial of a credit life insurance or credit accident and health insurance claim is based upon the medical records of the retail buyer, supplemental records supporting the denial of the claim must be made available upon request.

(A) Credit life insurance claims. The register or report pertaining to credit life insurance claims must show the name of the retail buyer, the account number, and the date of death.

(B) Credit accident and health insurance claims. The register or report pertaining to credit accident and health insurance claims must show the name of the retail buyer, the account number, and the date of the initial filing of a claim for any continuous period of disability.

(C) Credit involuntary unemployment insurance claims. The register or report pertaining to credit involuntary unemployment insurance claims must show the name of the retail buyer, the account number, and the date of the initial filing of the claim.

(D) Credit gap insurance claims. The register or report pertaining to credit gap insurance claims must show the name of the retail buyer, the account number, and the date of the claim.

(E) Collateral protection insurance claims. The register or report pertaining to collateral protection insurance claims must show the name of the retail buyer, the account number, and the amount of the insurance written on the motor vehicle.

(7) Adverse action records. Each licensee must maintain adverse action records regarding all applications relating to Texas Finance Code, Chapter 348 retail installment sales transactions. Adverse action records must be maintained according to the record retention requirements contained in Regulation B, Equal Credit Opportunity Act, 12 C.F.R. §202.12(b), as amended. The current retention periods are 25 months for consumer credit and 12 months for business credit.

(8) Retention and availability of records. All books and records required by this subsection must be available for inspection at any time by Office of Consumer Credit Commissioner staff, and must be retained for a period of three years from the date of the last payment made on the retail installment sales transaction, four years from the date of the contract, two years from the date of the final entry made thereon, whichever is later, or a different period of time if required by federal law. Upon notification of an examination pursuant to Texas Finance Code, §348.514(f), the licensee must be able to produce or access required books and records within a reasonable time at the licensed location or registered office specified on the license. The records required by this subsection must be available or accessible at an office in the state designated by the licensee except when the retail installment sales transactions are transferred under an agreement which gives the commissioner access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

(f) Repossession records.

(1) Repossession report. A licensee must be able to access or produce a list of all retail installment sales transactions involving repossession by the licensee. If the list of repossessions is accessed through an electronic system, the licensee must be able to generate a separate report of repossessions. If the repossession report is maintained under a manual recordkeeping system, the licensee must maintain a current list of accounts in repossession. A manual repossession report must be updated within a reasonable time from the date of repossession. The repossession report must include the retail buyer's name, account number, and date of repossession. If accounts have been subsequently assigned, the assignment must be noted in the repossession report as well as on the record of assigned accounts as prescribed in subsection (e)(4) of this section.

(2) Required information. For a retail installment sales transaction involving the repossession of the vehicle, the following records must be maintained, unless otherwise specified:

(A) a condition report indicating the condition of the collateral, if prepared by the licensee, the licensee's agent, or any independent contractor hired to perform the repossession;

(B) any invoices or receipts for any reasonable and authorized out-of-pocket expenses that are assessed to the buyer and incurred in connection with the repossession or sequestration of the vehicle including cost of storing, reconditioning, and reselling the vehicle;

(C) for a vehicle disposed of in a public or private sale as permitted by the Texas Business & Commerce Code, §9.610, the following documents:

(i) one of the three following notices:

(I) for a transaction not involving consumer goods, a copy of any Notification of Disposition of Collateral letter sent to the retail buyer and other obligors as required by Texas Business & Commerce Code, §9.613;

(II) for a transaction involving consumer goods, a copy of any Notice of Our Plan to Sell Property as sent to the retail buyer and other obligors as required by Texas Business & Commerce Code, §9.614; or

(III) a copy of the waiver of the notice of intended disposition prescribed by subclause (I) or (II) of this clause, as applicable, signed by the retail buyer and other obligors after default;

(ii) copies of evidence of the type or manner of private sale that was conducted. These records must show that the manner of the disposition was commercially reasonable, such as circumstances surrounding a dealer only auction, internet sale or other type of private disposition;

(iii) copies of evidence of the type or manner of public sale that was conducted. These records must show that the manner of the disposition was commercially reasonable, such as documentation of the date, place, manner of sale of the vehicle, and amounts received for disposition of the vehicle;

(iv) the bill of sale showing the name and address of the purchaser of the repossessed collateral and the purchase price of the vehicle;

(v) for a disposition or sale of collateral creating a surplus balance, a copy of the check representing the payment of the surplus balance paid to the retail buyer or other person entitled to the surplus;

(vi) for a disposition or sale of collateral resulting in a surplus or deficiency, a copy of the explanation of calculation of surplus or deficiency as required by Texas Business & Commerce Code, §9.616, if applicable;

(vii) a copy of the waiver of the deficiency letter if the retail seller elects to waive the deficiency balance in lieu of sending the explanation of calculation of surplus or deficiency form, if applicable;

(D) for a vehicle disposed of using the strict foreclosure method as permitted by the Texas Business & Commerce Code, §9.620 and §9.621, the following documents:

(i) one of the three following notices;

(I) for a transaction not involving consumer goods and where less than 60% of the cash price of the vehicle has been paid, a copy of the notice of proposal to accept collateral in full or partial satisfaction of the obligation;

(II) for a transaction involving consumer goods, a copy of the notice of proposal to accept collateral in full satisfaction of the obligation; or

(III) for a transaction where more than 60% of the cash price of the vehicle has been paid, a copy of the debtor or obligor's waiver of compulsory disposition of collateral signed by the retail buyers and other obligors after default;

(ii) for a transaction where the retail buyer rejects the offer under clause (i)(I) or (II) of this subparagraph, a copy of the retail buyer's signed objection to retention of the collateral;

(iii) copies of the records reflecting the partial or total satisfaction of the obligation; and

(E) for a vehicle disposed by another authorized method pursuant to the Texas Business & Commerce Code, Chapter 9, a copy of any and all records or documents relating to the disposition of the collateral.

§84.709. *Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts).*

(a) Applicability. The recordkeeping requirements of this section apply to holders who are not retail sellers that service or collect installments on retail installment sales contracts.

(b) Records required for each retail installment sales transaction. Each licensee must maintain records with respect to the licensee's compliance with Texas Finance Code, Chapter 348 for each motor vehicle retail installment sales contract made, acquired, serviced, or held under Chapter 348 and make those records available for examination.

(c) Recordkeeping systems. The records required by this section may be maintained by using either a legible paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. Licensees may maintain records on one or more recordkeeping systems, so long as the licensee is able to integrate records pertaining to an account into one or more reports as required by this section. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(d) Record search requirements.

(1) Open retail installment sales transactions. A licensee must be able to access or produce a list of all open retail installment sales transactions. If the list of open transactions is accessed through an electronic system, the licensee must be able to generate a separate report of open transactions. Alternatively, a licensee may provide a list containing open and closed retail installment sales transactions as long as the open transactions are designated as "open."

(2) Alphabetical search. A licensee must be able to access records in alphabetical order by retail buyer name for open and closed transactions during the record retention period required by subsection (e)(8) of this section. A licensee may comply with the alphabetical requirement by providing the commissioner's representative files by retail buyer name upon request by the commissioner's representative.

(e) Records required.

(1) Retail installment sales transaction report. Each licensee must maintain records sufficient to produce a retail installment sales transaction report that contains a listing of each Texas Finance Code, Chapter 348 retail installment sales contract acquired by the licensee. The report is only required to include those retail installment sales contracts that are subject to the record retention period of paragraph (8) of this subsection. The retail installment sales transaction report can be maintained either as a paper record or may be generated from an electronic system or systems so long as the licensee can integrate the following information into a report. If the retail installment sales transaction report is maintained under a manual recordkeeping system, the retail installment sales transaction report must be updated within a reasonable time from the date the contract is acquired. A retail installment sales transaction report must contain the following information:

(A) the date of contract (day, month, and year);

(B) the retail buyer's name(s);

(C) a method of identifying the vehicle, such as the last six (6) digits of the vehicle identification number or the stock number; and

(D) the account number.

(2) Retail installment sales transaction file. A licensee must maintain a paper or imaged copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) for all retail installment sales transactions:

(i) the retail installment sales contract signed by the retail buyer and the retail seller as required by Texas Finance Code, §348.101;

(ii) the credit application and any other written or recorded information used in evaluating the application;

(iii) the original certificate of title to the vehicle, a certified copy of the negotiable certificate of title, or a copy of the front of either the original or certified copy of the title; and

(iv) any records applicable to the retail installment transaction outlined by subparagraphs (B) - (G) of this paragraph.

(B) for a vehicle titled in Texas, a copy of the completed Texas Department of Transportation/Comptroller of Public Accounts' Application for Texas Certificate of Title (Form 130-U) signed by the retail buyer and seller that was filed with the appropriate county tax assessor-collector.

(C) for a retail installment sales transaction in which insurance policies are issued by or through the licensee in connection with the retail installment sales transaction, copies of the certificates of insurance.

(D) for a retail installment sales transaction involving insurance claims for credit life, credit accident and health, credit property, credit involuntary unemployment, collateral protection, or credit gap insurance:

(i) if the licensee does not negotiate or transact insurance claims on behalf of the retail buyer, records are not required to be maintained under this subparagraph.

(ii) if the licensee negotiates or transacts insurance claims on behalf of the retail buyer, supplemental insurance records, to the extent received by the licensee, supporting the settlement or denials of claims reported in the insurance loss records provided by paragraph (6) of this subsection including:

(I) Credit life insurance claims. The supplemental insurance records for credit life insurance claims must include the death certificate or other written records relating to the death of the retail buyer; proof of loss or claim form that discloses the amount of indebtedness at the time of death; check copies or electronic payment receipts that reflect the gross amount of the claim paid, including the amount of insurance benefits paid to beneficiaries other than the licensee which is in excess of the net amount necessary to pay the indebtedness; and the amount that is paid to beneficiaries other than the licensee.

(II) Credit accident and health insurance claims.

The supplemental insurance records for credit accident and health insurance claims must include any written records relating to the disability, including statements from the physician, employer, and retail buyer; the proof of loss or claim form filed by the retail buyer; and copies of the checks or electronic payment receipts reflecting disability payments paid by the insurance carrier.

(III) Credit involuntary unemployment insurance claims.

The supplemental insurance records for credit involuntary unemployment insurance claims must include any written document relating to the termination, layoff, or dismissal of the retail buyer; the proof of loss or claim form filed by the retail buyer; copies of the checks or electronic payment receipts reflecting the payment of the claim by the insurance carrier; and any other pertinent written record relating to the involuntary unemployment insurance claim.

(IV) Collateral protection insurance claims.

The supplemental insurance records for collateral protection insurance claims must include the law enforcement report, fire department report, or other written record reflecting the loss or destruction of any covered motor vehicle; the proof of loss or claim form filed by the retail buyer; copies of the checks or electronic payment receipts reflecting the payment of the claim by the insurance carrier; and any other pertinent written record relating to the collateral protection insurance claim.

(V) Credit gap insurance claims.

The supplemental insurance records for credit gap insurance claims must include the gap insurance claim form; proof of loss and settlement check from the retail buyer's basic comprehensive, collision, or uninsured/underinsured policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle; documents that provide verification of the retail buyer's primary insurance deductible; if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss of the motor vehicle; if the accident was not investigated by a law enforcement officer, a copy of the Texas Department of Public Safety's "Driver's Accident Report" (Form ST-2) filed in connection with the total loss of the motor vehicle; and copies of the checks reflecting the settlement amount paid by the licensee for the gap insurance claim.

(E) for a retail installment sales transaction where separate disclosures are required by federal or state law including the following:

(i) a transaction where disclosures required by the Truth in Lending Act are not incorporated into the text of the retail installment sales contract and the credit was extended for primarily for personal, family, or household purposes, a copy of the Truth in Lending statement required by Regulation Z, Truth in Lending, 12 C.F.R. §226.18, *et seq.*;

(ii) a transaction involving a cosigner, the notice to cosigner required by the Federal Trade Commission's Credit Practices Trade regulation, 16 C.F.R. §444.3.

(F) for a retail installment sales transaction that has been repaid in full, evidence of the discharge or release of lien as prescribed by 43 TAC, §17.3(h) (relating to Motor Vehicle Certificates of Title).

(G) for a retail installment sales transaction involving repossession, the records required by subsection (f) of this section.

(3) Account record for each retail installment sales contract (including payment and collection contact history). A separate paper, or an electronic record, must be maintained covering each retail installment sales contract. The paper or electronic account record must

be readily available by reference to either a retail buyer's name or account number.

(A) Required information. The account record for each retail installment sales contract must contain at least the following information, unless stated otherwise:

- (i) account number as recorded in the retail installment sales transaction report;
- (ii) date of contract;
- (iii) name and address of retail buyer;
- (iv) payment history information:
 - (I) itemized payment entries showing date payment received; dual postings are acceptable if date of posting is other than date of receipt;

(II) if requested during an examination or investigation, a payoff amount that denotes amounts applied to principal, time price differential, default, deferment, or other authorized charges;

(v) for a retail installment sales contract where the licensee receives a refund of insurance charges or authorized ancillary products, a licensee is responsible for maintaining sufficient documentation of any refund including final entries and is also responsible for providing refunds to the retail buyer or correctly applying refunds to the retail buyer's account. Refund amounts must be itemized to show:

- (I) time price differential refunded, if any;
- (II) the amount of any insurance charges refunded;
- (III) the amount of any authorized ancillary products charges refunded;
- (vi) collection contact history, including a written record of:

(I) all collection contacts made by a licensee with the retail buyer or any other person in connection with the collection of amounts due under a motor vehicle retail installment sales contract;

(II) all collection contacts made by the retail buyer with the licensee in connection with the collection of amounts due under a motor vehicle retail installment sales contract;

(III) for the collection contacts in subclauses (I) and (II) of this clause, the written record must include the date, method of contact, contacted party, person initiating the contact, and a summary of the contact;

(IV) copies of individual collection notices or letters or references to standard collection letters sent to the retail buyer.

(B) Recommended information. In addition to the required information under subparagraph (A) of this paragraph, it is recommended that the account record for each retail installment sales contract contain the following information:

- (i) retail installment sales contract payment schedule and terms itemized to show:
 - (I) number of installments;
 - (II) due date of installments;
 - (III) amount of each installment; and
 - (IV) maturity date;
- (ii) telephone number of retail buyer;

(iii) names and addresses of co-retail buyer or other obligors, if any;

(iv) amount financed;

(v) total time price differential charge;

(vi) total of payments;

(vii) amount of premium charges for insurance products.

(C) Corrective entries. A licensee may make corrective entries to the account record for each retail installment sales contract if the corrective entry is justified. A licensee must maintain the reason and supporting documentation for each corrective entry made to the account record. The reason for the corrective entry may be recorded in the collection contact history of the account record. The supporting documentation justifying the corrective entry can be maintained in the individual account record for each retail installment sales contract or properly stored and indexed in a licensee's optically imaged record-keeping system. If a licensee manually maintains the account record, the licensee must properly correct an improper entry by drawing a single line through the improper entry and entering the correct information above or below the improper entry. No erasures or other obliterations may be made on the payments received or collection contact history section of the manual account record for each retail installment sales contract.

(4) Assignment report.

(A) Required information. A licensee must maintain or produce an assignment report, whether paper or electronic, including any Texas Finance Code, Chapter 348 retail installment sales contract made by or acquired by the licensee that is assigned from its licensed or registered location. The assignment report must show the name of the retail buyer, the account number or other unique number given to the retail buyer, the date of assignment, and the name and address to which the accounts are assigned.

(B) Securitization or financing exception. If the servicing rights are retained by the licensee, then the licensee is not required to include in the assignment report retail installment sales transactions that were assigned to a legal entity as part of a securitization agreement. A licensee is also not required to include in the assignment report retail installment sales transactions that have been pledged as collateral for a bona fide financing arrangement to the licensee.

(5) General business and accounting records. General business and accounting records concerning retail installment sales transactions must be maintained. The business and accounting records must include receipts, documents, or other records for each disbursement made by the licensee at the retail buyer's direction or request, on his behalf, or for his benefit, that is charged to the retail buyer, including repossession, sequestration, disposition, or legal fees relating to repossession, sequestration, or disposition. The licensee is not required to produce information protected under the attorney-client privilege or work product privilege.

(6) Insurance loss records. Each licensee who negotiates or transacts the filing of insurance claims must maintain a register or be able to generate a report, paper or electronic, reflecting information to the extent received by the licensee on credit life, credit accident and health, credit property, credit involuntary unemployment, and single-interest insurance claims whether paid or denied by the insurance carrier. If the reason for the denial of a credit life insurance or credit accident and health insurance claim is based upon the medical records of the retail buyer, supplemental records supporting the denial of the claim must be made available upon request.

(A) Credit life insurance claims. The register or report pertaining to credit life insurance claims must show the name of the retail buyer, the account number, and the date of death.

(B) Credit accident and health insurance claims. The register or report pertaining to credit accident and health insurance claims must show the name of the retail buyer, the account number, and the date of the initial filing of a claim for any continuous period of disability.

(C) Credit involuntary unemployment insurance claims. The register or report pertaining to credit involuntary unemployment insurance claims must show the name of the retail buyer, the account number, and the date of the initial filing of the claim.

(D) Credit gap insurance claims. The register or report pertaining to credit gap insurance claims must show the name of the retail buyer, the account number, and the date of the claim.

(E) Collateral protection insurance claims. The register or report pertaining to collateral protection insurance claims must show the name of the retail buyer, the account number, and the amount of the insurance written on the motor vehicle.

(7) Adverse action records. Each licensee must maintain adverse action records regarding all applications relating to Texas Finance Code, Chapter 348 retail installment sales transactions. Adverse action records must be maintained according to the record retention requirements contained in Regulation B, Equal Credit Opportunity Act, 12 C.F.R. §202.12(b), as amended. The current retention periods are 25 months for consumer credit and 12 months for business credit.

(8) Retention and availability of records. All books and records required by this subsection must be available for inspection at any time by Office of Consumer Credit Commissioner staff, and must be retained for a period of three years from the date of the last payment made on the retail installment sales transaction, four years from the date of the contract, two years from the date of the final entry made thereon, whichever is later, or a different period of time if required by federal law. Upon notification of an examination pursuant to Texas Finance Code, §348.514(f), the licensee must be able to produce or access required books and records within a reasonable time at the licensed location or registered office specified on the license. The records required by this subsection must be available or accessible at an office in the state designated by the licensee except when the retail installment sales transactions are transferred under an agreement which gives the commissioner access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

(f) Repossession records.

(1) Repossession report. A licensee must be able to access or produce a list of all retail installment sales transactions involving repossession by the licensee. If the list of repossessions is accessed through an electronic system, the licensee must be able to generate a separate report of repossessions. If the repossession report is maintained under a manual recordkeeping system, the licensee must maintain a current list of accounts in repossession. A manual repossession report must be updated within a reasonable time from the date of repossession. The repossession report must include the retail buyer's name, account number, and date of repossession. If accounts have been subsequently assigned, the assignment must be noted in the repossession report as well as on the record of assigned accounts as prescribed in subsection (e)(4) of this section.

(2) Required information. For a retail installment sales transaction involving the repossession of the vehicle, the following records must be maintained, unless otherwise specified:

(A) a condition report indicating the condition of the collateral, if prepared by the licensee, the licensee's agent, or any independent contractor hired to perform the repossession;

(B) any invoices or receipts for any reasonable and authorized out-of-pocket expenses that are assessed to the buyer and incurred in connection with the repossession or sequestration of the vehicle including cost of storing, reconditioning, and reselling the vehicle;

(C) for a vehicle disposed of in a public or private sale as permitted by the Texas Business & Commerce Code, §9.610, the following documents:

(i) one of the three following notices:

(I) for a transaction not involving consumer goods, a copy of any Notification of Disposition of Collateral letter sent to the retail buyer and other obligors as required by Texas Business & Commerce Code, §9.613;

(II) for a transaction involving consumer goods, a copy of any Notice of Our Plan to Sell Property as sent to the retail buyer and other obligors as required by Texas Business & Commerce Code, §9.614; or

(III) a copy of the waiver of the notice of intended disposition prescribed by subclause (I) or (II) of this clause, as applicable, signed by the retail buyer and other obligors after default;

(ii) copies of evidence of the type or manner of private sale that was conducted. These records must show that the manner of the disposition was commercially reasonable, such as circumstances surrounding a dealer only auction, internet sale or other type of private disposition;

(iii) copies of evidence of the type or manner of public sale that was conducted. These records must show that the manner of the disposition was commercially reasonable, such as documentation of the date, place, manner of sale of the vehicle, and amounts received for disposition of the vehicle;

(iv) the bill of sale showing the name and address of the purchaser of the repossessed collateral and the purchase price of the vehicle;

(v) for a disposition or sale of collateral creating a surplus balance, a copy of the check representing the payment of the surplus balance paid to the retail buyer or other person entitled to the surplus;

(vi) for a disposition or sale of collateral resulting in a surplus or deficiency, a copy of the explanation of calculation of surplus or deficiency as required by Texas Business & Commerce Code, §9.616, if applicable;

(vii) a copy of the waiver of the deficiency letter if the retail seller elects to waive the deficiency balance in lieu of sending the explanation of calculation of surplus or deficiency form, if applicable;

(D) for a vehicle disposed of using the strict foreclosure method as permitted by the Texas Business & Commerce Code, §9.620 and §9.621, the following documents:

(i) one of the three following notices:

(I) for a transaction not involving consumer goods and where less than 60% of the cash price of the vehicle has

been paid, a copy of the notice of proposal to accept collateral in full or partial satisfaction of the obligation;

(II) for a transaction involving consumer goods, a copy of the notice of proposal to accept collateral in full satisfaction of the obligation; or

(III) for a transaction where more than 60% of the cash price of the vehicle has been paid, a copy of the debtor or obligor's waiver of compulsory disposition of collateral signed by the retail buyers and other obligors after default;

(ii) for a transaction where the retail buyer rejects the offer under clause (i)(I) or (II) of this subparagraph, a copy of the retail buyer's signed objection to retention of the collateral;

(iii) copies of the records reflecting the partial or total satisfaction of the obligation; and

(E) for a vehicle disposed by another authorized method pursuant to the Texas Business & Commerce Code, Chapter 9, a copy of any and all records or documents relating to the disposition of the collateral.

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

Filed with the Office of the Secretary of State on October 17, 2008.

TRD-200805515

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Effective date: November 6, 2008

Proposal publication date: August 22, 2008

For further information, please call: (512) 936-7621



TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 311. OTHER LICENSES SUBCHAPTER A. LICENSING PROVISIONS DIVISION 1. OCCUPATIONAL LICENSES

16 TAC §311.3

The Texas Racing Commission adopts an amendment to 16 TAC §311.3 concerning Information for Background Investigation without changes to the text as published in the August 22, 2008, issue of the *Texas Register* (33 TexReg 6686). Section 311.3 relates to the requirement for the Commission to examine the criminal history records of licensees.

The amendment establishes a \$12.00 fee that an applicant for an occupational license must pay whenever the individual submits fingerprints so that the Commission may obtain a criminal history record. This change will enable the Commission to submit fingerprints electronically and receive criminal histories more promptly, allowing the Commission to more quickly identify those who are not eligible for licensure due to a disqualifying criminal history.

The Commission received no comments in response to the proposed amendment.

The amendment is adopted under the Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting horse or greyhound racing involving wagering and other rules to administer the Texas Racing Act, §7.05, which authorizes the Commission to establish a fee schedule for licenses, and §11.01, which requires the Commission to adopt rules to regulate pari-mutuel wagering on greyhound and horse racing.

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

Filed with the Office of the Secretary of State on October 20, 2008.

TRD-200805538

Mark Fenner

General Counsel

Texas Racing Commission

Effective date: December 1, 2008

Proposal publication date: August 22, 2008

For further information, please call: (512) 833-6699



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 amendments to §153.9 regarding Applications without changes to the proposed text as published in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7396) and will not be republished.

The amendments to §153.9 restore language in subsection (a) that was inadvertently omitted when other amendments were made in 2006 and revise the Appraiser Experience Log to comply with new Appraiser Qualifications Board (aqb) requirements as articulated in aqb Guide Note 6.

The reasoned justification for the rule as adopted is (1) greater clarity regarding requirements to become licensed, and (2) that the rule will conform with federal requirements as necessary to maintain TALCB's certification and ability to continue licensing and certifying appraisers.

No comments were received regarding the amendment as proposed.

The amendment is adopted under the Texas Occupations Code §1103.151, which authorizes the Texas Appraiser Licensing and Certification Board to adopt rules relating to certificates and licenses.

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

Filed with the Office of the Secretary of State on October 20, 2008.

TRD-200805541

Devon V. Bijansky

Counsel

Texas Appraiser Licensing and Certification Board

Effective date: November 9, 2008

Proposal publication date: September 5, 2008

For further information, please call: (512) 465-3900



22 TAC §153.11

The Texas Appraiser Licensing and Certification Board (TALCB) adopts an amendment to §153.11 regarding Examinations without changes to the proposed text as published in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7397) and will not be republished.

The amendment modifies the examination fee to reflect the cost under the new contract for examination administration services contract effective September 1, 2008. This fee reflects the amount the examination vendor charges directly to applicants and does not affect the amount of revenue collected by the agency.

The reasoned justification for the rule as adopted is reduced cost to applicants for appraiser licenses and conformity with the new contract.

No comments were received regarding the amendment as proposed.

The amendment is adopted under the Texas Occupations Code §1103.156, which authorizes the Texas Appraiser Licensing and Certification Board to establish examination fees.

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

Filed with the Office of the Secretary of State on October 20, 2008.

TRD-200805540

Devon V. Bijansky

Counsel

Texas Appraiser Licensing and Certification Board

Effective date: November 9, 2008

Proposal publication date: September 5, 2008

For further information, please call: (512) 465-3900



22 TAC §153.18

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to §153.18, regarding Appraiser Continuing Education, without changes to the proposed text as published in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7398) and will not be republished.

The amendments serve two purposes: (1) to limit the amount of participation, other than as a student, in real estate appraisal educational processes and programs that may be used to satisfy appraiser continuing education (ACE) requirements, in order to comply with new Appraiser Qualifications Board (AQB) requirements, and (2) to delete the language of subsection (c), which is duplicative of 22 TAC §153.17(c).

The reasoned justification for the rule as adopted is that the rule will conform with federal requirements as necessary to maintain TALCB's certification and ability to continue licensing and certifying appraisers.

No comments were received regarding the amendments as proposed.

The amendments are adopted under the Texas Occupations Code §1103.151, which authorizes the Texas Appraiser Licensing and Certification Board to adopt rules relating to certificates and licenses.

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

Filed with the Office of the Secretary of State on October 20, 2008.

TRD-200805539

Devon V. Bijansky

Counsel

Texas Appraiser Licensing and Certification Board

Effective date: November 9, 2008

Proposal publication date: September 5, 2008

For further information, please call: (512) 465-3900



22 TAC §153.23

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to §153.23, regarding Inactive Certificate or License, without changes to the proposed text as published in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7399) and will not be republished.

The amendments serve two purposes: (1) to require inactive appraisers who wish to return to active status to complete all education that would have been required had the license been on active status, rather than only the education that was not completed during the last two-year period, as required by the federal Appraiser Qualification Board (AQB); and (2) to correct a non-substantive typographical error in subsection (b) that was introduced when the section was adopted in 2003.

The reasoned justification for the rule as adopted is that the rule will conform with federal requirements as necessary to maintain TALCB's certification and ability to continue licensing and certifying appraisers.

No comments were received regarding the amendments as proposed.

The amendments are adopted under the Texas Occupations Code §1103.151, which authorizes the Texas Appraiser Licensing and Certification Board to adopt rules relating to certificates and licenses.

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

Filed with the Office of the Secretary of State on October 20, 2008.

TRD-200805537

Devon V. Bijansky

Counsel

Texas Appraiser Licensing and Certification Board

Effective date: November 9, 2008

Proposal publication date: September 5, 2008

For further information, please call: (512) 465-3900



CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE

SUBCHAPTER C. POST HEARING

22 TAC §157.17

The Texas Appraiser Licensing and Certification Board (TALCB) adopts an amendment to §157.17, regarding Final Decisions and Orders, without changes to the proposed text as published in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7400) and will not be republished.

The amendment eliminates the 60-day time period between the issuance of a proposal for decision and action on the proposal by the Board.

The reasoned justification for the rule as adopted is increased efficiency and consumer protection in the administrative process. By requiring the Board simply to wait until all applicable appeal time periods have elapsed before taking action, those cases that were not appealed can be acted on by the Board at an earlier meeting than under the 60-day rule.

No comments were received regarding the amendment as proposed.

The amendment is adopted under the Texas Occupations Code Chapter 1103, Subchapter K, Contested Case Hearings.

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

Filed with the Office of the Secretary of State on October 20, 2008.

TRD-200805542

Devon V. Bijansky

Counsel

Texas Appraiser Licensing and Certification Board

Effective date: November 9, 2008

Proposal publication date: September 5, 2008

For further information, please call: (512) 465-3900



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER E. CLAIMS PROCESSING-- PURCHASE VOUCHERS

34 TAC §5.51

The Comptroller of Public Accounts adopts an amendment to §5.51, concerning requirements for purchase documents, without changes to the proposed text as published in the June 13, 2008, issue of the *Texas Register* (33 TexReg 4641). The amendment changes the name of the purchase guide from "State of Texas Purchase Voucher Guide" to the "Purchase Policies and Procedures Guide." The amendment includes the definition of a mail code and changes the name of a payee identification number to its correct title, Texas identification number (TIN), as defined in the Government Code. Finally, the amendment clarifies the specific composition of a TIN.

No comments were received regarding adoption of the amendment and there were no comments received at the public hearing held October 1, 2008.

This amendment is authorized under Government Code, §2155.322 which provides the comptroller the authority to adopt the form or manner that state agencies must use to certify the receipt of goods and services along with the financial information and purchase information provided by the invoice and purchase voucher. It is also authorized under Government Code §2155.0012 which authorizes the comptroller to adopt rules to administer purchasing procedures under Chapter 2155.

The amendment implements Government Code, §403.039 and §403.071.

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

Filed with the Office of the Secretary of State on October 20, 2008.

TRD-200805521

Martin Cherry

General Counsel

Comptroller of Public Accounts

Effective date: November 9, 2008

Proposal publication date: June 13, 2008

For further information, please call: (512) 475-0387



34 TAC §5.54

The Comptroller of Public Accounts adopts an amendment to §5.54, concerning consulting services contracts, without changes to the proposed text as published in the June 13, 2008, issue of the *Texas Register* (33 TexReg 4643). This section is being amended to implement House Bill 3560, 80th Legislature, 2007. This bill transferred the procurement functions of the Texas Building and Procurement Commission (TBPC) to the comptroller's office. The amendment implements this change in law by changing references to the old commission from "Texas

Building and Procurement Commission" (TBPC) to "Texas Procurement and Support Services" (TPASS), a division of the comptroller's office. Other changes to the section are for clarity.

No comments were received regarding adoption of the amendment and there were no comments received at the public hearing held October 1, 2008.

This amendment is authorized under Government Code, §2254.039, which provides the comptroller the authority to adopt rules for the administration of consulting services contracts.

The amendment implements Government Code, §2155.0011.

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

Filed with the Office of the Secretary of State on October 20, 2008.

TRD-200805522

Martin Cherry

General Counsel

Comptroller of Public Accounts

Effective date: November 9, 2008

Proposal publication date: June 13, 2008

For further information, please call: (512) 475-0387



34 TAC §5.57

The Comptroller of Public Accounts adopts an amendment to §5.57, concerning use of payment cards by state agencies, without changes to the proposed text as published in the June 13, 2008, issue of the *Texas Register* (33 TexReg 4645). This section is being amended to implement House Bill 3560, 80th Legislature, 2007. This bill transferred the procurement functions of the Texas Building and Procurement Commission (TBPC) to the comptroller's office. The amendment implements this change in law by changing references to the old commission from "Texas Building and Procurement Commission" (TBPC) to "Texas Procurement and Support Services" (TPASS), a division of the comptroller's office. Other changes to the section are for clarity.

No comments were received regarding adoption of the amendment and there were no comments received at the public hearing held October 1, 2008.

This amendment is authorized under Government Code, §403.023, which provides the comptroller the authority to adopt rules relating to the acceptance of credit, charge, and debit cards for the payment of fees, taxes, and other charges assessed by state agencies.

The amendment implements Government Code, §2155.0011.

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

Filed with the Office of the Secretary of State on October 20, 2008.

TRD-200805523

Martin Cherry

General Counsel

Comptroller of Public Accounts

Effective date: November 9, 2008

Proposal publication date: June 13, 2008

For further information, please call: (512) 475-0387



CHAPTER 20. TEXAS PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER C. PROCUREMENT

34 TAC §20.34

The Comptroller of Public Accounts adopts an amendment to §20.34, concerning Centralized Master Bidders List (CMBL), without changes to the proposed text as published in the August 1, 2008, issue of the *Texas Register* (33 TexReg 6068). This section is being amended to clarify the annual fee for registration on the CMBL.

Government Code, §2155.266, authorizes the comptroller to charge a fee in an amount designed to recover the costs in making and maintaining the CMBL and in soliciting bids and proposals. The comptroller is adopting amendments to this rule to clarify the annual registration fee for the CMBL.

Subsection (a) is being amended to correct references to the Texas Building and Procurement Commission (TBPC). The TBPC was renamed the Texas Facilities Commission and the state purchasing function was transferred to the Comptroller of Public Accounts by House Bill 3560, 80th Legislature, 2007. House Bill 3560 also repealed the Catalog Information Systems Vendors (CISV) program. Therefore, the comptroller removes the reference to CISV from subsection (a).

Subsection (b) is being amended to clarify that the annual fee for the CMBL is \$70.00. Subsection (d)(2) is being amended to remove the word "annual" and replace it with "required." This is a stylistic change to remove any limitation or requirement of the fee from subsection (d). The fee will be identified in subsection (b) only, to avoid confusion.

The references to TBPC in subsections (d)(1), (f), and (g) are corrected to comptroller. Lastly the reference to the CISV program is removed from subsection (h).

No comments were received regarding adoption of the amendment and there were no comments received at the public hearing held October 1, 2008.

This amendment is adopted under Government Code, §2155.267, which authorizes the comptroller to adopt rules to administer the CMBL; and Government Code, §2155.0012, which authorizes the comptroller to adopt rules to administer Chapter 2155.

The amendment implements Government Code, Chapter 2155, Subchapter E.

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

Filed with the Office of the Secretary of State on October 20, 2008.

TRD-200805524
Martin Cherry
General Counsel
Comptroller of Public Accounts
Effective date: November 9, 2008
Proposal publication date: August 1, 2008
For further information, please call: (512) 475-0387



34 TAC §20.48

The Comptroller of Public Accounts adopts amendments to §20.48, concerning auditing of purchase related documentation, without changes to the proposed text as published in the June 13, 2008, issue of the *Texas Register* (33 TexReg 4656). The change is needed as a result of the recent legislative transfer of purchasing related functions from the Texas Building and Procurement Commission (TBPC) to the comptroller's office. Amending the rule would facilitate the former TBPC procurement audits to be conducted as a routine part of the Comptroller's Fiscal Management post-payment audit program. Procurement related data would be incorporated into the annual audit risk assessment which is the basis for each annual audit plan. In order to achieve efficiencies, it is imperative that requirements for audit scheduling and document sampling be consistent with the current post-payment audit program. This change minimizes disruption to state agencies and maximizes the use of state agencies' documentation while in comptroller possession.

No comments were received regarding adoption of the amendment and there were no comments received at the public hearing held October 1, 2008.

The amendments are adopted under Government Code, §2155.324 and §2155.325, which provide the comptroller with the authority to determine the auditing methods used for purchase audits and to adopt rules regarding the types of purchases that will be audited.

The amendment implements Government Code, §2155.324 and §2155.325.

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

Filed with the Office of the Secretary of State on October 20, 2008.

TRD-200805525
Martin Cherry
General Counsel
Comptroller of Public Accounts
Effective date: November 9, 2008
Proposal publication date: June 13, 2008
For further information, please call: (512) 475-0387



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Agriculture Resources Protection Authority

Title 4, Part 7

The Texas Department of Agriculture (the department) proposes to review Title 4, Texas Administrative Code, Part 7, Chapter 101, Subchapter A, concerning Routine Procedures for the Texas Agriculture Resources Protection Authority (Authority), pursuant to the Texas Government Code, §2001.039. Section 2001.039 requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist.

The assessment of Chapter 101, Subchapter A, by the department at this time indicates that the subchapter should be repealed. The Authority was abolished by the Texas Legislature during the 79th Legislative Session, 2005. The Authority's rules were, in effect, voided and no longer in effect upon abolishment of the Authority. The proposed repeal of Chapter 101, Subchapter A, §§101.1 - 101.3 and §101.20 may be found in the Proposed Rules section of this issue of the *Texas Register*.

The department is accepting comment on the review of Chapter 101, Subchapter A. Comments on the review must be submitted within 30 days following the publication of this notice in the *Texas Register*. Comments on Chapter 101, Subchapter A, may be submitted to Jimmy Bush, Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

TRD-200805535

Dolores Alvarado Hibbs

General Counsel, Texas Department of Agriculture

Texas Agriculture Resources Protection Authority

Filed: October 20, 2008



State Board of Dental Examiners

Title 22, Part 5

The Texas State Board of Dental Examiners (Board) files this notice of intention to review 22 TAC Chapter 107, Dental Board Procedures. This review is pursuant to §2001.039 of the Texas Government Code, pertaining to agency review of existing rules.

Comments relating to whether these rules should be repealed, readopted, or readopted with changes must be received within 30 days, and may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972.

To ensure consideration, comments must clearly specify the particular section of the rule to which they apply. General comments should be labeled as such. Comments should include proposed alternative language as appropriate.

Chapter 107. Dental Board Procedures

Subchapter A. Procedures Governing Grievances, Hearings, and Appeals

§107.1. Application.

§107.11. Definitions.

§107.12. Object of Rules.

§107.13. Scope of Rules.

§107.14. Filing of Documents.

§107.15. Computation of Time.

§107.16. Agreement To Be in Writing.

§107.17. Service in Non-rulemaking Proceedings.

§107.18. Conduct and Decorum.

§107.20. Persons Interested in Proceedings.

§107.21. Appearances Personally or by Representative.

§107.29. Licenses.

§107.31. Personal Service.

§107.48. Subpoenas.

§107.49. Proposals for Decision.

§107.50. Filing of Exceptions, Briefs, and Replies.

§107.51. Findings of Fact and Conclusions of Law.

§107.52. Oral Argument.

§107.53. Final Decisions and Orders.

§107.54. Administrative Finality.

§107.55. Motions for Rehearing.

§107.56. Motions for Rehearing: Procedures.

§107.57. The Record.

§107.58. Cost of Appeal.

§107.59. Ex Parte Consultations.

§107.60. Adopting, Repealing, or Amending Rules.

§107.62. Appendix.
§107.63. Informal Disposition and Alternative Dispute Resolution.
§107.64. Required Reporting.
§107.65. Time Limits.
§107.66. Modification to Order.
§107.67. Review of Modification.
§107.68. Appearances.
Subchapter B. Procedures for Investigating Complaints
§107.100. Receipt, Processing, and Coordination of Complaints.
§107.101. Guidelines for the Conduct of Investigation.
§107.102. Procedures for Investigating Complaints.
§107.103. Dismissal of Complaints.
§107.110. Compliance.
Subchapter C. Administrative Penalties
§107.202. Disciplinary Guidelines and Administrative Penalty Schedule.
§107.300. Registration of Non-Profit Corporations Authorized to Hire Dentists.
TRD-200805543
Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
Filed: October 20, 2008



The Texas State Board of Dental Examiners (Board) files this notice of intention to review 22 TAC Chapter 108, Professional Conduct. This review is pursuant to §2001.039 of the Texas Government Code, pertaining to agency review of existing rules.

Comments relating to whether these rules should be repealed, readopted, or readopted with changes must be received within 30 days, and may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972.

To ensure consideration, comments must clearly specify the particular section of the rule to which they apply. General comments should be labeled as such. Comments should include proposed alternative language as appropriate.

Chapter 108. Professional Conduct

Subchapter A. Professional Responsibility

§108.1. Professional Responsibility.
§108.2. Fair Dealing.
§108.3. Consumer Information.
§108.4. Names of Dentists.
§108.5. Patient Abandonment.
§108.6. Report of Patient Death or Injury Requiring Hospitalization.
§108.7. Minimum Standard of Care, General.
§108.8. Records of the Dentist.
§108.9. Dishonorable Conduct.

§108.11. Display of Registration.
Subchapter B. Sanitation and Infection Control
§108.20. Purpose.
§108.21. Requirements.
§108.22. Access to Dental Office.
§108.23. Definitions.
§108.24. Required Sterilization and Disinfection.
§108.25. Dental Health Care Workers.
Subchapter C. Anesthesia And Anesthetic Agents
§108.30. Effective Date.
§108.31. Definitions.
§108.32. Minimum Standard of Care, Anesthesia.
§108.33. Sedation/Anesthesia Permit.
§108.34. Permit Requirements and Clinical Provisions.
§108.35. Authority to Demonstrate Anesthesia.
Subchapter D. Mobile Dental Facilities
§108.40. Permit Required.
§108.41. Definitions.
§108.42. Obtaining a Permit.
§108.43. Operating Requirements for Permitted Mobile Dental Facilities or Portable Dental Units.
Subchapter E. Business Promotion
§108.50. Objectives of Rules.
§108.51. Advertisements.
§108.52. False or Misleading Communications.
§108.53. Professional Announcements.
§108.54. Announcement of Services.
§108.55. Announcement of Credentials in Non-Specialty Areas.
§108.56. Specialty Announcement.
§108.57. Specialist Announcement of Credentials in Non-Specialty Areas.
§108.58. Degrees.
§108.59. Testimonials.
§108.60. False, Misleading or Deceptive Referral Schemes.
§108.61. Unlicensed Clinicians.
Subchapter F. Contractual Agreements
§108.70. Improper Influence on Professional Judgment.
§108.71. Providing Copies of Certain Contracts.
§108.72. Dental Custodian of Records.
TRD-200805544
Sherri Sanders Meek
Executive Director
State Board of Dental Examiners
Filed: October 20, 2008



The Texas State Board of Dental Examiners (Board) files this notice of intention to review 22 TAC Chapter 110, Enteral Conscious Sedation. This review is pursuant to §2001.039 of the Texas Government Code, pertaining to agency review of existing rules.

Comments relating to whether these rules should be repealed, readopted, or readopted with changes must be received within 30 days, and may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972.

To ensure consideration, comments must clearly specify the particular section of the rule to which they apply. General comments should be labeled as such. Comments should include proposed alternative language as appropriate.

Chapter 110. Enteral Conscious Sedation

§110.1. Definitions.

§110.2. Permit.

§110.3. Permit Requirements and Clinical Provisions.

§110.4. Effective Date.

TRD-200805545

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Filed: October 20, 2008



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 7 TAC §84.201(d)(1)(D)

Alternative Time Price Differential Rate Authorized by TEX. FIN. CODE §348.105 Converted to an Equivalent Add-on Rate per \$100 per Annum.				
TERM - Number of Months	ADD-ON RATE - per \$100.00 per Annum		TERM - Number of Months	ADD-ON RATE - per \$100.00 per Annum
1	18.0000		32	9.9925
2	13.5335		33	10.0061
3	12.0596		34	10.0201
4	11.3337		35	10.0346
5	10.9072		36	10.0495
6	10.6303		37	10.0648
7	10.4388		38	10.0804
8	10.3008		39	10.0963
9	10.1985		40	10.1125
10	10.1210		41	10.1290
11	10.0617		42	10.1457
12	10.0160		43	10.1626
13	9.9807		44	10.1797
14	9.9537		45	10.1970
15	9.9322		46	10.2145
16	9.9181		47	10.2322
17	9.9074		48	10.2500
18	9.9003		49	10.2697
19	9.8963		50	10.2860
20	9.8948		51	10.3042
21	9.8957		52	10.3225
22	9.8985		53	10.3409
23	9.9030		54	10.3594
24	9.9089		55	10.3780
25	9.9161		56	10.3967
26	9.9245		57	10.4155
27	9.9339		58	10.4343
28	9.9441		59	10.4532
29	9.9552		60	10.4721
30	9.9670		61	10.4911
31	9.9795			

Figure: 7 TAC §84.201(d)(2)(B)(iii)

TERM - # OF MONTHS	ADD-ON RATES PER \$100.00 PER ANNUM			
	\$7.50	\$10.00	\$12.50	\$15.00
1	18.0000%	18.0000%	18.0000%	18.0000%
2	18.0000%	18.0000%	18.0000%	19.9452%
3	18.0000%	18.0000%	18.6541%	22.3624%
4	18.0000%	18.0000%	19.8374%	23.7670%
5	18.0000%	18.0000%	20.5996%	24.6655%
6	18.0000%	18.0000%	21.1215%	25.2754%
7	18.0000%	18.0000%	21.4935%	25.7054%
8	18.0000%	18.0000%	21.7659%	26.0160%
9	18.0000%	18.0000%	21.9688%	26.2435%
10	18.0000%	18.0000%	22.1215%	26.4109%
11	18.0000%	18.0000%	22.2367%	26.5338%
12	18.0000%	18.0000%	22.3232%	26.6226%
13	18.0000%	18.0338%	22.3875%	26.6849%
14	18.0000%	18.0812%	22.4340%	26.7265%
15	18.0000%	18.1171%	22.4664%	26.7513%
16	18.0000%	18.1435%	22.4872%	26.7626%
17	18.0000%	18.1621%	22.4985%	26.7628%
18	18.0000%	18.1743%	22.5020%	26.7540%
19	18.0000%	18.1809%	22.4988%	26.7375%
20	18.0000%	18.1830%	22.4901%	26.7148%
21	18.0000%	18.1811%	22.4768%	26.6867%
22	18.0000%	18.1758%	22.4594%	26.6542%
23	18.0000%	18.1677%	22.4387%	26.6178%
24	18.0000%	18.1570%	22.4150%	26.5783%
25	18.0000%	18.1442%	22.3889%	26.5360%
26	18.0000%	18.1294%	22.3605%	26.4915%
27	18.0000%	18.1130%	22.3304%	26.4449%
28	18.0000%	18.0952%	22.2986%	26.3968%
29	18.0000%	18.0761%	22.2654%	26.3472%
30	18.0000%	18.0559%	22.2311%	26.2964%
31	18.0000%	18.0347%	22.1957%	26.2446%
32	18.0000%	18.0126%	22.1594%	26.1920%
33	18.0000%	18.0000%	22.1224%	26.1387%
34	18.0000%	18.0000%	22.0847%	26.0848%
35	18.0000%	18.0000%	22.0464%	26.0305%
36	18.0000%	18.0000%	22.0077%	25.9759%
37	18.0000%	18.0000%	21.9686%	25.9210%
38	18.0000%	18.0000%	21.9292%	25.8659%
39	18.0000%	18.0000%	21.8895%	25.8106%
40	18.0000%	18.0000%	21.8496%	25.7553%
41	18.0000%	18.0000%	21.8095%	25.7000%
42	18.0000%	18.0000%	21.7693%	25.6447%
43	18.0000%	18.0000%	21.7290%	25.5894%
44	18.0000%	18.0000%	21.6886%	25.5343%
45	18.0000%	18.0000%	21.6483%	25.4793%
46	18.0000%	18.0000%	21.6079%	25.4245%
47	18.0000%	18.0000%	21.5679%	25.3699%
48	18.0000%	18.0000%	21.5273%	25.3155%
49	18.0000%	18.0000%	21.4871%	25.2613%
50	18.0000%	18.0000%	21.4469%	25.2074%

TERM - # OF MONTHS	ADD-ON RATES PER \$100.00 PER ANNUM			
	\$7.50	\$10.00	\$12.50	\$15.00
51	18.0000%	18.0000%	21.4069%	25.1537%
52	18.0000%	18.0000%	21.3670%	25.1003%
53	18.0000%	18.0000%	21.3272%	25.0473%
54	18.0000%	18.0000%	21.2876%	24.9945%
55	18.0000%	18.0000%	21.2481%	24.9420%
56	18.0000%	18.0000%	21.2088%	24.8898%
57	18.0000%	18.0000%	21.1696%	24.8380%
58	18.0000%	18.0000%	21.1307%	24.7865%
59	18.0000%	18.0000%	21.0919%	24.7354%
60	18.0000%	18.0000%	21.0533%	24.6845%
61	18.0000%	18.0000%	21.0149%	24.6341%
62	18.0000%	18.0000%	20.9767%	24.5839%
63	18.0000%	18.0000%	20.9387%	24.5342%
64	18.0000%	18.0000%	20.9009%	24.4847%
65	18.0000%	18.0000%	20.8633%	24.4357%
66	18.0000%	18.0000%	20.8259%	24.3870%
67	18.0000%	18.0000%	20.7888%	24.3386%
68	18.0000%	18.0000%	20.7518%	24.2906%
69	18.0000%	18.0000%	20.7151%	24.2430%
70	18.0000%	18.0000%	20.6786%	24.1957%
71	18.0000%	18.0000%	20.6423%	24.1488%
72	18.0000%	18.0000%	20.6063%	24.1022%
73	18.0000%	18.0000%	20.5705%	24.0559%
74	18.0000%	18.0000%	20.5349%	24.0101%
75	18.0000%	18.0000%	20.4995%	23.9645%
76	18.0000%	18.0000%	20.4643%	23.9194%
77	18.0000%	18.0000%	20.4294%	23.8745%
78	18.0000%	18.0000%	20.3947%	23.8300%
79	18.0000%	18.0000%	20.3602%	23.7859%
80	18.0000%	18.0000%	20.3259%	23.7421%
81	18.0000%	18.0000%	20.2919%	23.6986%
82	18.0000%	18.0000%	20.2581%	23.6555%
83	18.0000%	18.0000%	20.2245%	23.6127%
84	18.0000%	18.0000%	20.1911%	23.5702%

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.

Cancer Prevention and Research Institute of Texas

Public Notice - Award of Consulting Services Contract

Description of Activities Consultant will conduct:

To assist the cancer prevention and research institute of Texas (CPRIT) with executive level recruitment services for the agency. The services will include one or more of the following: assistance in marketing executive level position; identification of a qualified and diverse pool of talent for the institute to consider as respondents for an executive level position; assistance in the screening of potential respondents for specific position identified and development of candidate profiles that include comprehensive background (education and work experience) and relevant reference information; assistance with the interview process of potential candidates; assistance in maintaining potential candidates' interest in a position; and identification of salary ranges and typical benefits packages for similarly situated positions.

Name and Business Address of Consultant:

Spencer Stuart
945 East Paces Ferry Road
Atlanta, GA 30326

Total Value and Beginning and Ending Dates of Contract:

Value: \$206,333.00
Beginning Date: October 9, 2008
Ending Date: August 31, 2009

Dates on which Documents, Films, Recordings, or Reports that Consultant is required to Present are due:

Date: Short List Interview Report due December 2008
TRD-200805565
Sandra Balderrama
Interim Administrative Director
Cancer Prevention and Research Institute of Texas
Filed: October 21, 2008

Comptroller of Public Accounts

Notice of Award

Pursuant to Chapter 2254, Subchapter B, Chapter 403, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of consulting contract award in connection with the Request for Proposals (RFP #189a) for statistician consulting services to advise the Comptroller on statistical issues and provide other related services in connection with the Comptroller's annual Property Value Study (Study).

Comptroller announces that the contract was awarded to Analytical Systems, Inc., P.O. Box 656, Castroville, Texas 78009. The total amount of this contract is not to exceed \$45,000.00. The term of the

contract is October 15, 2008 through August 31, 2009. The reports submitted under this contract will be due on or before August 31, 2009.

The notice of request for proposals (RFP #189a) was published in the August 1, 2008, issue of the *Texas Register* (33 TexReg 6185).

TRD-200805482
Pamela G. Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: October 17, 2008

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/27/08 - 11/02/08 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 10/27/08 - 11/02/08 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 11/01/08 - 11/30/08 is 5.00% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 11/01/08 - 11/30/08 is 5.00% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-200805560
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 21, 2008

Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application was received from Associated Credit Union of Texas (Texas City) seeking approval to merge with Island Teachers Federal Credit Union (Galveston), with Associated Credit Union of Texas being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider

in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200805568
Harold E. Feeney
Commissioner
Credit Union Department
Filed: October 22, 2008



Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from Abilene State School Credit Union, Abilene, Texas to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in Taylor County, Texas, to be eligible for membership in the credit union.

An application was received from Neighborhood Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit persons who work, reside, worship or attend school in Denton County, Texas, to be eligible for membership in the credit union.

An application was received from Auto Parts Employees Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit persons who live, work or worship within a 5 mile radius of the credit union office located at 1216 Everman Parkway, Fort Worth, Texas 76140, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.tcud.state.tx.us/applications.html>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200805566
Harold E. Feeney
Commissioner
Credit Union Department
Filed: October 22, 2008



Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Applications to Expand Field of Membership--Approved

Anheuser-Busch Employees Credit Union (#1), St. Louis, Missouri--See *Texas Register* issue dated August 29, 2008.

Anheuser-Busch Employees Credit Union (#2), St. Louis, Missouri--See *Texas Register* issue dated August 29, 2008.

PosTel Family Credit Union, Wichita Falls, Texas--See *Texas Register* issue dated July 25, 2008.

DATCU, Denton, Texas--See *Texas Register* issue dated June 27, 2008.

InvesTex Credit Union, Houston, Texas--See *Texas Register* issue dated June 27, 2008.

Applications for a Merger or Consolidation--Approved

Superior Community Credit Union (Brownwood) and First Central Credit Union (Waco)--See *Texas Register* issue dated May 30, 2008.

Sid Richardson State Employees Credit Union (Odessa) and Members Financial Federal Credit Union (Midland)--See *Texas Register* issue dated May 30, 2008.

Sherwin Williams Texas Federal Credit Union (Garland) and America's Credit Union (Garland).

TRD-200805567
Harold E. Feeney
Commissioner
Credit Union Department
Filed: October 22, 2008



Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 1, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 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 December 1, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Atrium Companies, Inc. dba Danvid Window; DOCKET NUMBER: 2008-0994-AIR-E; IDENTIFIER: RN100804053; LOCATION: Carrollton, Dallas County; TYPE OF FACILITY: window and door manufacturing plant; RULE VIOLATED: 30 Texas Administrative Code (TAC) §101.10(e) and Texas Health and Safety Code (THSC), §382.085(b), by failing to timely submit the 2007 emissions inventory; PENALTY: \$770; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321;

REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Austwell Aqua Farm, Inc.; DOCKET NUMBER: 2008-2223-IWD-E; IDENTIFIER: RN103896163; LOCATION: Austwell, Refugio County; TYPE OF FACILITY: aquaculture; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 03995, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits for biochemical oxygen demand (BOD) and total suspended solids (TSS); PENALTY: \$1,270; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: City of Byers; DOCKET NUMBER: 2008-1199-MWD-E; IDENTIFIER: RN101720415; LOCATION: Byers, Clay County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010890001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits for BOD and flow; and 30 TAC §305.125(17) and TPDES Permit Number WQ0010890001, Sludge Provisions, by failing to submit the annual sludge report; PENALTY: \$11,650; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: C.B.H. Services, Inc.; DOCKET NUMBER: 2008-0913-AIR-E; IDENTIFIER: RN100638030; LOCATION: Orange, Orange County; TYPE OF FACILITY: marine surface coating and abrasive cleaning; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b), by failing to obtain authorization under a permit or meet the conditions of a permit by rule; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: CCAA, L.L.C. dba BCS Stop & Go Potties; DOCKET NUMBER: 2008-0925-MSW-E; IDENTIFIER: RN105205306; LOCATION: Brazos County; TYPE OF FACILITY: construction and demolition debris recycling; RULE VIOLATED: 30 TAC §328.5(d), by failing to establish and maintain financial assurance for the closure of a recycling facility that stores combustible materials outdoors; PENALTY: \$3,477; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: Chemical Lime, Limited; DOCKET NUMBER: 2008-0696-AIR-E; IDENTIFIER: RN102307956; LOCATION: La Feria, Cameron County; TYPE OF FACILITY: bulk mineral storage and lime slacking; RULE VIOLATED: 30 TAC §101.4 and §116.115(b)(2), New Source Review (NSR) Permit Number 80695 General Condition Number 1, and THSC, §382.085(a) and (b), by failing to prevent nuisance conditions; PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: Clovercreek Municipal Utility District; DOCKET NUMBER: 2008-0861-MWD-E; IDENTIFIER: RN102844172; LOCATION: Montgomery County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.65 and §305.125(2) and the Code, §26.121(a), by failing to maintain authorization for the discharge of wastewater; PENALTY: \$2,700; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL

OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Cornerbrook Construction, LP dba Summerbrooke Apartments; DOCKET NUMBER: 2008-1508-WQ-E; IDENTIFIER: RN105593941; LOCATION: Kemah, Galveston County; TYPE OF FACILITY: construction company; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Cottonwood Creek MHP, L.P.; DOCKET NUMBER: 2008-0967-PWS-E; IDENTIFIER: RN101442259; LOCATION: Lancaster, Dallas County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to secure a sanitary control easement; 30 TAC §290.39(j)(I), by failing to notify the executive director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.45(b)(1)(F)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.46(s)(1), by failing to calibrate the water system's well meter at least once every three years; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices; and 30 TAC §290.42(e)(3)(D), by failing to provide facilities for determining the amount of disinfectant used daily as well as the amount of disinfectant remaining for use; PENALTY: \$1,513; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Jose De Los Santos dba De Los Santos Ready Mix; DOCKET NUMBER: 2008-0951-MSW-E; IDENTIFIER: RN105178941; LOCATION: Eagle Pass, Maverick County; TYPE OF FACILITY: sand and gravel excavation and sorting business; RULE VIOLATED: 30 TAC §330.15, by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Danielle Porras, (512) 239-2602; REGIONAL OFFICE: 707 East Calton Road, Laredo, Texas 78041-3887, (956) 791-6611.

(11) COMPANY: Dr. Gobbler, Limited; DOCKET NUMBER: 2007-1974-MLM-E; IDENTIFIER: RN104886536; LOCATION: Clifton, Bosque County; TYPE OF FACILITY: livestock manure composting; RULE VIOLATED: 30 TAC §330.303(a), Texas Natural Resource Conservation Commission (TNRCC) General Permit Number WQG200006, Part II, Section B.2, and the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater; and 30 TAC §317.4(j)(9) and TNRCC General Permit Number WQG200006, Part III, Section B.2(b), by failing to meet the minimum design criteria for retention facilities; PENALTY: \$1,575; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Dripping Springs Independent School District; DOCKET NUMBER: 2008-0403-MWD-E; IDENTIFIER: RN103118972; LOCATION: Hays County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013748002 Effluent Limitations and Monitoring Requirements A., and the Code, §26.121(a), by failing to comply with the permitted effluent limits for BOD; 30 TAC §305.125(1) and TPDES Permit Number WQ0013748002, Monitoring Requirements 7.c., by failing to notify the TCEQ within five working days of effluent violations exceeding more than 40% of the permitted effluent limitations; and 30 TAC §305.125(1) and TPDES Permit Number WQ0013748002, Special Provisions 8., by

failing to submit the results of the soil sample analysis; PENALTY: \$9,450; Supplemental Environmental Project (SEP) offset amount of \$7,560 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(13) COMPANY: Edge Concepts LLC; DOCKET NUMBER: 2008-1518-WQ-E; IDENTIFIER: RN105519466; LOCATION: Randall County; TYPE OF FACILITY: construction company; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(14) COMPANY: Encino Developers Inc; DOCKET NUMBER: 2008-1517-WQ-E; IDENTIFIER: RN104323092; LOCATION: Tom Green County; TYPE OF FACILITY: construction company; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(15) COMPANY: Flat Rock Minerals, LLC; DOCKET NUMBER: 2008-1525-WR-E; IDENTIFIER: RN105497176; LOCATION: Upshur County; TYPE OF FACILITY: rock crusher; RULE VIOLATED: the Code, §11.081 and §11.121, by impounding, diverting, or using state water without a required permit; PENALTY: \$875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(16) COMPANY: Flint Hills Resources, LP; DOCKET NUMBER: 2008-1066-AIR-E; IDENTIFIER: RN100217389; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Air Permit Number 16989/PSD-TX-794, Special Condition (SC) Number 1, Federal Operating Permit (FOP) Number O-01317, SC Number 16, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$27,100; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(17) COMPANY: FOCUS METROPLEX, INC. dba City Star; DOCKET NUMBER: 2008-0908-PST-E; IDENTIFIER: RN101559573; LOCATION: Richland Hills, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system (VRS) in proper operating condition; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all underground storage tanks (USTs) are monitoring in a manner which will detect a release; and 30 TAC §334.49(a)(2) and the Code, §26.3475(d), by failing to ensure that a cathodic protection system is designed, installed, operated, and maintained in a manner that will ensure that corrosion protection will be continuously provided to all underground metal components of the UST system; PENALTY: \$5,400; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: City of Henderson; DOCKET NUMBER: 2008-1524-WQ-E; IDENTIFIER: RN101612679; LOCATION: Rusk County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector

general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(19) COMPANY: City of Humble; DOCKET NUMBER: 2008-0327-MWD-E; IDENTIFIER: RN102179447; LOCATION: Humble, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010763002, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (4), TPDES Permit Number WQ0010763002, Permit Conditions Number 2, g., and the Code, §26.121(a), by failing to prevent unauthorized discharges of wastewater; PENALTY: \$6,500; SEP offset amount of \$5,200 applied to Gulf Coast Waste Disposal Authority ("GCWDA") - River, Lakes, Bays 'n Bayous Trash Bash; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: Edward Jacobs; DOCKET NUMBER: 2008-1509-WQ-E; IDENTIFIER: RN105536502; LOCATION: Flint, Smith County; TYPE OF FACILITY: construction company; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(21) COMPANY: JARODIYA & SONS LLC. dba D&S Food Mart; DOCKET NUMBER: 2008-0840-PST-E; IDENTIFIER: RN101539682; LOCATION: Richardson, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition; 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide release detection for the pressurized piping associated with UST systems; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors; 30 TAC §334.49(a)(4) and the Code, §26.3475(d), by failing to provide corrosion protection to all underground metal components of a UST system; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request; PENALTY: \$9,794; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Jordan Paving Corporation; DOCKET NUMBER: 2008-1581-WQ-E; IDENTIFIER: RN105570048; LOCATION: Abilene, Taylor County; TYPE OF FACILITY: contractor; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(23) COMPANY: Kendrick Oil Company dba Buddy's; DOCKET NUMBER: 2008-1522-PST-E; IDENTIFIER: RN102061363; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: \$875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(24) COMPANY: Kuraray America, Inc.; DOCKET NUMBER: 2008-0883-AIR-E; IDENTIFIER: RN100212216; LOCATION: Pasadena,

Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), NSR Permit Number 9576, SC Number 1, and THSC, §382.085(b), by failing to maintain emissions at or below the rates listed in the maximum allowable emission rate table; PENALTY: \$20,200; SEP offset amount of \$8,080 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(25) COMPANY: LCY Elastomers LP; DOCKET NUMBER: 2008-1013-AIR-E; IDENTIFIER: RN102325974; LOCATION: Baytown, Harris County; TYPE OF FACILITY: thermoplastic elastomers production plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 20311, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$3,650; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(26) COMPANY: Lindsey Contractors, Inc.; DOCKET NUMBER: 2008-1260-AIR-E; IDENTIFIER: RN100829498; LOCATION: Waco, McLennan County; TYPE OF FACILITY: asphalt plant; RULE VIOLATED: 30 TAC §116.115(c), NSR Permit Number 42292, SC Number 6, and THSC, §382.085(b), by failing to maintain the maximum opacity of the dryer/mixer fabric filter baghouse stack below the 5% limit; PENALTY: \$850; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(27) COMPANY: LUFKIN CREOSOTING COMPANY, INC.; DOCKET NUMBER: 2008-0904-MLM-E; IDENTIFIER: RN101638906; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: wood preserving; RULE VIOLATED: 30 TAC §335.69(a)(1)(A), by failing to obtain a permit for the storage of hazardous waste; 30 TAC §335.10(c) and 40 Code of Federal Regulations (CFR) §262.20(a), by failing to properly complete manifests; 30 TAC §335.152(a)(1) and §335.69(a)(4) and 40 CFR §264.16(d)(3), by failing to provide records documenting personnel training; 30 TAC §335.69(a)(1)(A) and §335.112(a)(8) and 40 CFR §265.173(a), by failing to provide sufficient cover for hazardous waste containers; and 30 TAC §290.40(g), by failing to have authorization prior to using a public water supply system; PENALTY: \$20,205; SEP offset amount of \$8,082 applied to Angelina Beautiful Clean; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(28) COMPANY: MOHSIN INC. dba Green Acre Mart; DOCKET NUMBER: 2008-1087-PST-E; IDENTIFIER: RN102345162; LOCATION: Alice, Jim Wells County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to provide written notice of any change or additional information to the agency; 30 TAC §334.8(c)(5)(B)(ii), by failing to renew a previously issued UST delivery certificate by timely and proper submission of a completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; 30 TAC §334.10(b), by failing to maintain UST records and make them available for inspection; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to

record inventory volume measurement; and 30 TAC §334.8(c)(5)(C), by failing to ensure that all USTs are properly identified as listed on the facility's UST registration and self-certification form; PENALTY: \$8,550; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(29) COMPANY: City of Mount Pleasant; DOCKET NUMBER: 2008-0924-MWD-E; IDENTIFIER: RN102885654; LOCATION: Mount Pleasant, Titus County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TPDES Permit Number WQ0010575004, Permit Conditions Number 2.g, and the Code, §26.121(a)(1), by failing to prevent unauthorized discharges; PENALTY: \$9,500; SEP offset amount of \$7,600 applied to RC&D - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(30) COMPANY: Dirk de Boer dba New Benniger Dairy; DOCKET NUMBER: 2008-1110-AGR-E; IDENTIFIER: RN102791738; LOCATION: Bowie County; TYPE OF FACILITY: dairy operation; RULE VIOLATED: 30 TAC §321.33(d), by failing to obtain authorization to expand an existing animal feeding operation; PENALTY: \$2,100; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(31) COMPANY: Oldcastle Windows, Inc. dba Vistawall; DOCKET NUMBER: 2008-1168-AIR-E; IDENTIFIER: RN100218783; LOCATION: Terrell, Kaufman County; TYPE OF FACILITY: aluminum extrusions and painting operation; RULE VIOLATED: 30 TAC §115.429(b) and THSC, §382.085(b), by failing to test the regenerative thermal oxidizer and associated paint booths for capture and control efficiency; PENALTY: \$770; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(32) COMPANY: Pasadena Refining System, Inc.; DOCKET NUMBER: 2008-0621-AIR-E; IDENTIFIER: RN100716661; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), TCEQ Air Permit Number 20246, SC Number 5, 40 CFR §63.120(b)(8) and §63.646(a), FOP Number O-01544, Special Terms and Conditions Numbers 1A and 16, and THSC, §382.085(b), by failing to repair seal gaps; 30 TAC §116.115(c), TCEQ Air Permit Number 20246, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to notify the TCEQ when the actual volatile organic compound emissions exceeded the estimate provided in the initial shutdown notification by more than the reportable quantity; 30 TAC §116.115(c), TCEQ Air Permit Number 20246, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$33,144; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(33) COMPANY: Richland Special Utilities District; DOCKET NUMBER: 2008-1089-PWS-E; IDENTIFIER: RN101451524; LOCATION: Richland Springs, San Saba County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(i) and THSC, §341.0315(c), by failing to provide two or more wells having a total well capacity of 0.6 gallons per minute per connection; 30 TAC §290.109(c)(1)(A), by failing to collect routine distribution coliform samples; 30 TAC §290.42(1), by failing to maintain a plant operations manual; 30 TAC §290.41(c)(3)(Q), by failing to properly cover the air release device on Well Number 1 with a 16-mesh or finer corrosion-resistant screen; 30 TAC §290.46(m), by failing to initiate

maintenance and housekeeping practices; 30 TAC §290.46(t), by failing to post a legible sign at each production, treatment, and storage facility that contains the name of the water supply and emergency telephone numbers; and 30 TAC §290.42(e)(4)(C), by failing to provide adequate ventilation which includes high level and floor level screened vents; PENALTY: \$1,370; ENFORCEMENT COORDINATOR: Epifanio Villareal, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(34) COMPANY: Ridgecrest Inc; DOCKET NUMBER: 2008-1515-WQ-E; IDENTIFIER: RN104700430; LOCATION: Tom Green County; TYPE OF FACILITY: construction company; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(35) COMPANY: Curtis Shupak; DOCKET NUMBER: 2008-1513-WOC-E; IDENTIFIER: RN103694675; LOCATION: Burleson County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(36) COMPANY: Sierra Vista Construction, Inc.; DOCKET NUMBER: 2008-1516-WQ-E; IDENTIFIER: RN104933049; LOCATION: Tom Green County; TYPE OF FACILITY: construction company; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(37) COMPANY: Larry Smith; DOCKET NUMBER: 2008-1582-WQ-E; IDENTIFIER: RN104873831; LOCATION: Somervell County; TYPE OF FACILITY: construction company; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(38) COMPANY: The Premcor Refining Group, Inc.; DOCKET NUMBER: 2007-1455-AIR-E; IDENTIFIER: RN102584026; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: oil refinery; RULE VIOLATED: 30 TAC §101.201(a)(2)(F) and §122.143(4), FOP Number O-1498, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to properly report an emissions event; 30 TAC §116.115(c) and §122.143(4), FOP Number O-1498, GTC, and SC Number 18A, Air Permit 7600A, SC Number 1, and THSC, §382.085(b), by failing to properly operate tanks 283 and 284; and 30 TAC §§101.20(3), 116.115(b)(2)(F), 116.715(a) and (c)(7), and 122.143(4), FOP Number O-1498, GTC and SC Number 18A, Air Permits 6825A/PSD-TX-49, SC Number 5A and 7600A, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$14,641; SEP offset amount of \$7,320 applied to South East Texas Regional Planning Commission-West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(39) COMPANY: The Salvation Army; DOCKET NUMBER: 2007-0984-MWD-E; IDENTIFIER: RN102769098; LOCATION: Midlothian, Ellis County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013904001, Effluent Limitations and Monitoring Re-

quirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits for TSS; and 30 TAC §305.125(17) and TPDES Permit Number WQ0013904001, Monitoring and Reporting Requirements Number 1, by failing to submit monitoring results; PENALTY: \$4,085; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(40) COMPANY: TXI Operations, LP; DOCKET NUMBER: 2008-0813-WQ-E; IDENTIFIER: RN105471445; LOCATION: Lewisville, Denton County; TYPE OF FACILITY: ready-mixed concrete plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number TXG110631, Part III, Permit Requirements, Section A, and the Code, §26.121(a), by failing to comply with permit effluent limits; 30 TAC §319.4 and TPDES General Permit Number TXG110631, Part III, Permit Requirements, Section A, by failing to monitor for each parameter included in the permit; and 30 TAC §21.4 and the Code, §5.702, by failing to pay outstanding aboveground storage tank fees; PENALTY: \$3,566; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(41) COMPANY: Universal Corrosion Specialists, Inc.; DOCKET NUMBER: 2008-1292-AIR-E; IDENTIFIER: RN105526958; LOCATION: Mexia, Freestone County; TYPE OF FACILITY: surface coating operation; RULE VIOLATED: 30 TAC §106.433(7)(D) and THSC, §382.085(b), by failing to obtain a permit by rule prior to construction and/or operation of an outdoor surface coating operation; PENALTY: \$900; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200805557

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 21, 2008



Enforcement Orders

An agreed order was entered regarding Brazosport Equipment and Rental, Inc, Docket No. 1999-1482-MSW-E on October 10, 2008 assessing \$5,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert Mosley, Staff Attorney at (512) 239-0627, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Matt Dietz dba Matt Dietz Company, Docket No. 2002-0714-MLM-E on October 10, 2008 assessing \$9,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Attorney at (512) 239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding South Hampton Resources, Inc. dba South Hampton Refining Company, Docket No. 1997-0180-AIR-E on October 10, 2008 assessing \$274,433 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwood Estates, Inc., Docket No. 2001-1422-MWD-E on October 10, 2008 assessing \$31,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mohammad Elhomoud dba Sam's Grocery Mart, Docket No. 2002-0779-PST-E on October 10, 2008 assessing \$14,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert Perry dba American Camp and Mobile Home Park, Docket No. 2003-0213-MWD-E on October 9, 2008 assessing \$4,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Attorney at (512) 239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Parker County's Squaw Creek Downs, L.P., Docket No. 2003-1240-MLM-E on October 10, 2008 assessing \$5,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jimmy Kim dba Le Bon Cleaners, Docket No. 2003-1560-IHW-E on October 10, 2008 assessing \$18,428 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Friends International, Inc. dba Super Deli & Grocery, Docket No. 2003-0346-PST-E on October 10, 2008 assessing \$16,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxonmobil Oil Corporation dba Mobil Chemical Beaumont Chemical Plant, Docket No. 2003-1455-AIR-E on October 10, 2008 assessing \$23,938 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Oloko, Staff Attorney at (713) 422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding IZR Corporation dba Garland Fina, Docket No. 2003-1116-PST-E on October 10, 2008 assessing \$16,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Sammy's Groceries, Inc. dba Sammy's Groceries No., Sammy's Grocery No. 2 and Young's Drive In Grocery, Docket No. 2003-1120-PST-E on October 10, 2008 assessing \$11,320 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SNI Corporation dba Broadway Food Mart, Docket No. 2004-0043-PWS-E on October 10, 2008 assessing \$4,950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Wolfe City, Docket No. 2004-0072-MLM-E on October 10, 2008 assessing \$70,361 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert Mosley, Staff Attorney at (512) 239-0627, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding D & P Management Services, L.L.C. dba Airport Shell, Docket No. 2003-1163-PST-E on October 10, 2008 assessing \$27,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brad Bolton, Docket No. 2003-1528-OSI-E on October 10, 2008 assessing \$750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Attorney, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mohammed K. Aroud dba Jones Mart Shell, Docket No. 2004-0089-PST-E on October 10, 2008 assessing \$136,070 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation dba Mobil Chemical Beaumont Chemical Plant, Docket No. 2004-0125-AIR-E on October 10, 2008 assessing \$14,241 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Oloko, Staff Attorney at (713) 422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Nacogdoches, Docket No. 2004-0157-MWD-E on October 10, 2008 assessing \$15,975 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kas Investments, Ltd. dba Convenience Plus, Docket No. 2004-0380-PST-E on October 10, 2008 assessing \$3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Attorney at (512) 239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Roberto Negrete dba Fina Mart No. 18, Docket No. 2004-0386-AIR-E on October 10, 2008 assessing \$1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Esperanza Carrasco dba El Pabellon, Docket No. 2004-0402-PST-E on October 10, 2008 assessing \$56,500 in administrative penalties with \$29,320 deferred.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Virginia Enterprises, Inc. dba Super Food Store, Docket No. 2004-0407-PST-E on October 10, 2008 assessing \$7,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Deer Park Business, Inc. dba Fuel Expo, Docket No. 2004-0423-PST-E on October 10, 2008 assessing \$7,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Attorney at (512) 239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Maria E. Warren dba Peppers Pit Stop, Docket No. 2004-0515-PST-E on October 10, 2008 assessing \$19,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jaspal Singh dba RK Mart, Docket No. 2004-0535-PST-E on October 9, 2008 assessing \$5,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Attorney at (512) 239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Degussa Engineered Carbons, L.P., Docket No. 2004-0668-MLM-E on October 10, 2008 assessing \$51,510 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Attorney at (512) 239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Thatta Corporation Inc. dba Stop-N-Drive #26, Docket No. 2004-0672-PST-E on October 10, 2008 assessing \$13,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Texas Mexican Railway Company, Docket No. 2004-0711-MSW-E on October 10, 2008 assessing \$22,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cruz Mendez dba New Way, Docket No. 2004-0716-PST-E on October 10, 2008 assessing \$16,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert Mosley, Staff Attorney at (512) 239-0627, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Bipin Patel dba M and B Food Store, Docket No. 2004-0740-PST-E on October 9, 2008 assessing \$15,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Attorney at (512) 239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ayers Companies, Inc. dba County Line Truck Stop, Docket No. 2004-0821-PST-E on October 10, 2008 assessing \$8,740 in administrative penalties with \$2,252 deferred.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Bountheung Noymany dba Boat Club Grocery, Docket No. 2004-1008-PST-E on October 10, 2008 assessing \$6,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Combs, Staff Attorney at (512) 239-6939, 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 dba Du Pont Sabine River Works, Docket No. 2004-1135-MLM-E on October 10, 2008 assessing \$176,575 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Springtown, Docket No. 2004-1138-MWD-E on October 10, 2008 assessing \$6,420 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0600, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Asuda Holdings LLC dba Shell at Rosemeade, Docket No. 2004-1314-PST-E on October 10, 2008 assessing \$1,940 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fort Worth Excavating, Inc., Docket No. 2004-1318-WQ-E on October 10, 2008 assessing \$3,210 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Dow Chemical Company, Docket No. 2004-1344-MLM-E on October 10, 2008 assessing \$648,904 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Attorney at (512) 239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwestern Electric Power Company dba SWEPSCO, Docket No. 2004-1364-AIR-E on October 10, 2008 assessing \$98,176 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Barton Good Oil Company, Inc. dba Flying L Fastmart, Docket No. 2004-1583-PST-E on October 10, 2008 assessing \$4,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mohammad Rafiul Habib dba South Buckner Food, Docket No. 2004-1655-PST-E on October 10, 2008 assessing \$1,130 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Haskell, Docket No. 2004-1716-WQ-E on October 10, 2008 assessing \$6,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding IZR Corporation dba Garland Fina, Docket No. 2004-1775-PST-E on October 10, 2008 assessing \$2,540 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Combs, Staff Attorney at (512) 239-6939, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Yaman, Inc. dba 7 AM Food Store, Docket No. 2004-1799-PST-E on October 9, 2008 assessing \$3,210 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Leo Johnson dba Connally Center, Docket No. 2004-1858-PST-E on October 10, 2008 assessing \$26,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fincher Bros. Inc., Docket No. 2004-1989-WQ-E on October 10, 2008 assessing \$7,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Attorney at (512) 239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Asad Enterprises, Inc. dba Davis Food Mart, Docket No. 2004-1991-PST-E on October 10, 2008 assessing \$3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Attorney at (512) 239-1873, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WHB Cattle, L.P., Docket No. 2004-2023-MLM-E on October 10, 2008 assessing \$5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pat, Inc. dba Action Excavating, Docket No. 2004-2082-MLM-E on October 10, 2008 assessing \$9,660 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Newell Recycling of San Antonio, L.P., Newell Recycling Co., Inc., formerly known as Newell Salvage Company of San Antonio, Inc., Newell Ltd., Newell Enterprises, Inc., Newell International, Inc., Docket No. 2005-0014-MLM-E on October 9, 2008 assessing \$85,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Attorney at (512) 239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cedar Park E & J, Ltd., Docket No. 2005-0133-PST-E on October 10, 2008 assessing \$23,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Trudy J. Gillem dba Country Villa Mobile Home Park, Docket No. 2005-0201-PWS-E on October 10, 2008 assessing \$3,906 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham Richard, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Thunderbird Bay Water Services, Inc. dba Thunderbird Point Water System, Docket No. 2005-0546-PWS-E on October 10, 2008 assessing \$1,890 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Irma M. Saldivar dba Saldivar Food Store 2, Docket No. 2005-0614-PST-E on October 10, 2008 assessing \$2,140 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Oloko, Staff Attorney at (713) 422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mason Ready Mix, Inc., Docket No. 2005-0779-WQ-E on October 10, 2008 assessing \$6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mickey D. Wells dba Together Manufacturing, Docket No. 2005-0958-IHW-E on October 10, 2008 assessing \$28,355 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Frank Lewis dba Lewis Service and Sales, Docket No. 2005-0970-PST-E on October 10, 2008 assessing \$18,975 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Joey Sisca, Docket No. 2005-1114-LII-E on October 10, 2008 assessing \$4,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kent J. Miguez dba Kent J. Miguez Trailer Park, Docket No. 2005-1395-PWS-E on October 10, 2008 assessing \$1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Laura Strawbridge dba K&L Carwash, Docket No. 2005-1613-IWD-E on October 10, 2008 assessing \$2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Texas Latin American Conference of the International Pentecostal Holiness Church, Docket No. 2005-1708-PWS-E on October 10, 2008 assessing \$1,925 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Joaquin, Docket No. 2005-1747-MWD-E on October 10, 2008 assessing \$92,040 in administrative penalties with \$18,408 deferred.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Guss Lines dba Lines Cactus Grove Mobile Home Park, Docket No. 2005-2046-PWS-E on October 10, 2008 assessing \$6,813 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert Mosley, Staff Attorney at (512) 239-0627, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding American Golf Corporation and Wynnwood Peninsula Golf, LLC, Docket No. 2005-2084-MWD-E on October 10, 2008 assessing \$4,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Multi-Chem Group, LLC, Docket No. 2006-0516-MLM-E on October 10, 2008 assessing \$68,816 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding New SM, Inc. dba Dry Clean Super Center, Docket No. 2006-1313-DCL-E on October 10, 2008 assessing \$1,067 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Kmal Enterprises, Inc. dba Friendly Mart, Docket No. 2006-1430-PWS-E on October 10, 2008 assessing \$804 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding New Way Enterprise Inc. dba Time Out Food Mart #2, Docket No. 2006-1537-PST-E on October 10, 2008 assessing \$6,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TOTAL PETROCHEMICALS USA, INC., Docket No. 2007-1427-AIR-E on October 10, 2008 assessing \$529,300 in administrative penalties with \$105,860 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding McCarty Road Landfill TX, LP, Docket No. 2007-1464-MLM-E on October 10, 2008 assessing \$3,720 in administrative penalties with \$744 deferred.

Information concerning any aspect of this order may be obtained by contacting John Shelton, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Best Mart, Inc. dba Kold Spot and Kold Spot 37, Docket No. 2007-1880-PST-E on October 10, 2008 assessing \$27,980 in administrative penalties with \$5,596 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Pasadena, Docket No. 2007-1915-MWD-E on October 10, 2008 assessing \$31,620 in administrative penalties with \$6,324 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Veolia ES Technical Solutions, L.L.C., Docket No. 2007-1936-IWD-E on October 10, 2008 assessing \$7,320 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sunoco, Inc. (R&M), Docket No. 2008-0190-AIR-E on October 10, 2008 assessing \$4,850 in administrative penalties with \$970 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J C CONOCO, INC., Docket No. 2008-0193-PST-E on October 10, 2008 assessing \$11,305 in administrative penalties with \$2,261 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Friedman Recycling of El Paso, LP, Docket No. 2008-0255-MSW-E on October 10, 2008 assessing \$13,872 in administrative penalties with \$2,774 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SIRAJUDDIN CORPORATION dba Highland Food Store, Docket No. 2008-0279-PST-E on October 10, 2008 assessing \$12,932 in administrative penalties with \$2,586 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Golf Club at Circle C, LP, Docket No. 2008-0290-WR-E on October 10, 2008 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ramiro Carrillo dba Bob's Corner Store and Bob's Corner Store 2, Docket No. 2008-0314-PST-E on October 10, 2008 assessing \$18,392 in administrative penalties with \$3,678 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mamie Dell Baker dba Country Living Mobile Home Park, Docket No. 2008-0324-MWD-E on October 10, 2008 assessing \$11,660 in administrative penalties with \$2,332 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mammoet USA, Inc., Docket No. 2008-0349-WQ-E on October 10, 2008 assessing \$6,160 in administrative penalties with \$1,232 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 The Reinforced Earth Company, Docket No. 2008-0373-PWS-E on October 10, 2008 assessing \$1,507 in administrative penalties with \$301 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kenneth Haddad and Maynard Haddad dba H & H Car Wash, Docket No. 2008-0382-PST-E on October 10, 2008 assessing \$6,500 in administrative penalties with \$1,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Petrochemicals LP, Docket No. 2008-0385-AIR-E on October 10, 2008 assessing \$3,224 in administrative penalties with \$644 deferred.

Information concerning any aspect of this order may be obtained by contacting Aaron Houston, Enforcement Coordinator at (409) 899-8784, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chris Trout dba CTS C Store 1, Docket No. 2008-0394-PST-E on October 10, 2008 assessing \$7,230 in administrative penalties with \$1,446 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Corpus Christi, Docket No. 2008-0399-MWD-E on October 10, 2008 assessing \$18,180 in administrative penalties with \$3,636 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DONALD C. MOORE & SONS, INC. dba Handi Stop 1 and Handi Stop 3, Docket No. 2008-0404-PST-E on October 10, 2008 assessing \$13,750 in administrative penalties with \$2,750 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ash Grove Texas, L.P., Docket No. 2008-0407-AIR-E on October 10, 2008 assessing \$16,725 in administrative penalties with \$3,345 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Grady W. Mosley, Docket No. 2008-0415-PST-E on October 10, 2008 assessing \$6,300 in administrative penalties with \$1,260 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALIAHSAN ENTERPRISES, INC. dba Super Stop 8, Docket No. 2008-0418-PST-E on October 10, 2008 assessing \$4,200 in administrative penalties with \$840 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J. Cleo Thompson Investment Management, LLC, Docket No. 2008-0420-AIR-E on October 10, 2008 assessing \$3,625 in administrative penalties with \$725 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Goodyear Tire & Rubber Company, Docket No. 2008-0451-AIR-E on October 10, 2008 assessing \$16,650 in administrative penalties with \$3,330 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Melrose Construction, Inc., Docket No. 2008-0457-WQ-E on October 10, 2008 assessing \$1,500 in administrative penalties with \$300 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gray Utility Service L.L.C., Docket No. 2008-0463-PWS-E on October 10, 2008 assessing \$1,010 in administrative penalties with \$202 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (210) 490-3095, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Dow Chemical Company, Docket No. 2008-0478-AIR-E on October 10, 2008 assessing \$20,000 in administrative penalties with \$4,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fayette County Water Control and Improvement District Monument Hill, Docket No. 2008-0489-PWS-E on October 10, 2008 assessing \$347 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding R J Whitfield, Docket No. 2008-0494-MSW-E on October 10, 2008 assessing \$3,775 in administrative penalties with \$755 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. du Pont de Nemours and Company, Docket No. 2008-0499-AIR-E on October 10, 2008 assessing \$13,350 in administrative penalties with \$2,670 deferred.

Information concerning any aspect of this order may be obtained by contacting Aaron Houston, Enforcement Coordinator at (409)

899-8784, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Khaveed Ali dba Speedy Food Market, Docket No. 2008-0508-PST-E on October 10, 2008 assessing \$8,856 in administrative penalties with \$1,771 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dessau Fountains Estates, L.L.C., Docket No. 2008-0511-MWD-E on October 10, 2008 assessing \$31,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dolphin Petroleum, LP, Docket No. 2008-0513-AIR-E on October 10, 2008 assessing \$2,300 in administrative penalties with \$460 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Castlerock Communities, L.P., Docket No. 2008-0514-WQ-E on October 10, 2008 assessing \$1,800 in administrative penalties with \$360 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Corporation LP, Docket No. 2008-0551-AIR-E on October 10, 2008 assessing \$7,000 in administrative penalties with \$1,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding McGuffey Group, Inc., Docket No. 2008-0552-AIR-E on October 10, 2008 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AAMIR ENTERPRISES, INC dba Star Stop, Docket No. 2008-0577-PST-E on October 10, 2008 assessing \$4,576 in administrative penalties with \$915 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2008-0591-AIR-E on October 10, 2008 assessing \$6,000 in administrative penalties with \$1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-

3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Gordon, Docket No. 2008-0606-PWS-E on October 10, 2008 assessing \$725 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aero Greensmor, LP, Docket No. 2008-0661-MWD-E on October 10, 2008 assessing \$5,100 in administrative penalties with \$1,020 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Air Liquide Large Industries U.S., LP, Docket No. 2008-0663-AIR-E on October 10, 2008 assessing \$3,950 in administrative penalties with \$790 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oiltanking Beaumont Partners, L.P., Docket No. 2008-0688-AIR-E on October 10, 2008 assessing \$2,650 in administrative penalties with \$530 deferred.

Information concerning any aspect of this order may be obtained by contacting Aaron Houston, Enforcement Coordinator at (409) 899-8784, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Axtell Water Supply Corporation, Docket No. 2008-0710-PWS-E on October 10, 2008 assessing \$687 in administrative penalties with \$137 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (210) 490-3095, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valero Refining-Texas, L.P., Docket No. 2008-0712-AIR-E on October 10, 2008 assessing \$19,800 in administrative penalties with \$3,960 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PAC-N-SAC STORES, INC. dba Pac N Sac 104, Docket No. 2008-0731-MLM-E on October 10, 2008 assessing \$8,701 in administrative penalties with \$1,740 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Houston Oaks Golf Management Company, L.P., Docket No. 2008-0736-MWD-E on October 10, 2008 assessing \$3,120 in administrative penalties with \$624 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512)

239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Montgomery County Municipal Utility District No. 83, Docket No. 2008-0750-MWD-E on October 10, 2008 assessing \$2,300 in administrative penalties with \$460 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding American Commodities, Inc., Docket No. 2008-0754-WQ-E on October 10, 2008 assessing \$1,800 in administrative penalties with \$360 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TXI Operations, LP, Docket No. 2008-0774-IWD-E on October 10, 2008 assessing \$4,950 in administrative penalties with \$990 deferred.

Information concerning any aspect of this order may be obtained by contacting Lauren Smitherman, Enforcement Coordinator at (512) 239-5223, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Union Carbide Corporation, Docket No. 2008-0807-AIR-E on October 10, 2008 assessing \$5,250 in administrative penalties with \$1,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ADVANCE PETROLEUM DISTRIBUTING COMPANY, INC. dba Automated Fueling 82, Docket No. 2008-0810-PST-E on October 10, 2008 assessing \$1,120 in administrative penalties with \$224 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JIMI Enterprise Inc, Docket No. 2008-0833-MSW-E on October 10, 2008 assessing \$475 in administrative penalties with \$95 deferred.

Information concerning any aspect of this order may be obtained by contacting Ross Fife, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LoneStar Fiberglass Pools, LLC, Docket No. 2008-0859-AIR-E on October 10, 2008 assessing \$2,575 in administrative penalties with \$515 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (512) 239-1460, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Houston Refining LP, Docket No. 2008-0894-AIR-E on October 10, 2008 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding LA CHIRIPA, INC. dba Stadium Mart, Docket No. 2008-0946-PST-E on October 10, 2008 assessing \$3,500 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200805575
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 22, 2008



Notice of District Petition

Notices issued October 7, 2008 through October 15, 2008.

TCEQ Internal Control No. 08042008-D02; Alamo/ProTerra Joint Venture (the "Petitioner") filed a petition for creation of Fort Bend County Municipal Utility District No. 198 (the "District") with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the holder of title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; and (3) the proposed District will contain approximately an area of 471.3734 acres located within Fort Bend County, Texas. The filed engineer's report states the proposed District is not within the corporate boundaries of any city or within the extraterritorial jurisdiction of any city, town or village in Texas. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately \$64,330,000.

TCEQ Internal Control No. 09022008-D03; Pacific Indio Properties, L.L.C., (Petitioner) filed a petition for creation of Montgomery County Municipal Utility District No. 103 (District) with the TCEQ. The petition was filed pursuant to Article III, Section 52 and Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land, consisting of two tracts, to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District; (3) the proposed District will contain approximately 1,071 acres located in Montgomery County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time; the cost of the project is estimated to be approximately \$83,540,000 for water, wastewater, and drainage facilities, \$9,175,000 for recreational facilities, and \$22,000,000 for road facilities.

TCEQ Internal Control No. 07012008-D04; Canyon Falls Land Partners, L.P. and McGinnis Land Partners I, L.P., (Petitioners) filed a petition for creation of Canyon Falls Municipal Utility District No. 1 of Denton County (District) with the TCEQ. The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are the owners of a majority in value of the land, consisting of one tract, to be included in the proposed District; (2) there is one lien holder, American Bank of Texas, on the property to be included in the proposed District; (3) the proposed District will contain approximately 172.579 acres located in Denton County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the Town of Argyle, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately \$12,200,000.

TCEQ Internal Control No. 05292008-D06; CSM Realty Holdings II, Ltd. (the "Petitioner") filed a petition for creation of El Paso County Municipal Utility District No. 3 (the "District") with the TCEQ. The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the holder of title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; and (3) the proposed District will contain three tracts with a total area of approximately 236.975 acres located within El Paso County; and (4) the proposed District is within the extraterritorial jurisdiction of the City of El Paso, and is not within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. The petition states that by Resolution, dated February 6, 2007; the City of El Paso refused to give its consent to the creation of the proposed District. However, the Petitioner has provided evidence that the provisions of Texas Water Code §54.016 have been followed subsequent to this Resolution. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately \$11,200,000.

TCEQ Internal Control No. 05292008-D09; CSM Realty Holdings II, Ltd. (the "Petitioner") filed a petition for creation of El Paso County Municipal Utility District No. 4 (the "District") with the TCEQ. The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the holder of title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; and (3) the proposed District will contain an area of approximately 458.596 acres located within El Paso County; and (4) the proposed District is within the extraterritorial jurisdiction of the City of El Paso, and is not within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. The petition states that by Resolution, dated February 6, 2007; the City of El Paso refused to give its consent to the creation of the proposed District. However, the Petitioner has provided evidence that the provisions of Texas Water Code §54.016 have been followed subsequent to this Resolution. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project

and from the information available at the time, the cost of the project is estimated to be approximately \$18,400,000.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing;" (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200805573

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 22, 2008



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the 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 **December 1, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory au-

thority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 1, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Danny Wilde; DOCKET NUMBER: 2008-0097-MSW-E; TCEQ ID NUMBER: RN103670071; LOCATION: 9978 Robby Jones Road near San Angelo, Tom Green County, Texas; TYPE OF FACILITY: composting facility; RULES VIOLATED: 30 TAC §37.921 and §328.5(d) and Agreed Order Number 2006-0180-MSW-E, Ordering Provision Number 2.c, by failing to obtain sufficient financial assurance for the closure of a compost facility; PENALTY: \$5,025; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(2) COMPANY: James Ramirez dba West Beauregard Service Center; DOCKET NUMBER: 2005-0893-PST-E; TCEQ ID NUMBER: RN100545078; LOCATION: 1624 West Beauregard Avenue, San Angelo, Tom Green County, Texas; TYPE OF FACILITY: service station; RULES VIOLATED: 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to test the cathodic protection system at least once every three years for proper operability; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to conduct an annual line leak detector test for performance and operational reliability; 30 TAC §334.8(c)(4)(A)(vi)(I) and (c)(5)(B)(i), by failing to obtain a TCEQ delivery certificate by timely and proper submission of a new Registration and Self-Certification form to the TCEQ; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3475(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting the delivery of a regulated substance into a underground storage tank (UST) system; 30 TAC §334.8(c)(5)(C), by failing to ensure that permanent tags, labels, or markings were applied or affixed to the immediate area of the UST fill tube; and 30 TAC §334.45(c)(3)(A), by failing to securely anchor the shear valve at the base of the gasoline dispenser; PENALTY: \$8,100; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(3) COMPANY: Rex D. Melton; DOCKET NUMBER: 2007-1866-LII-E; TCEQ ID NUMBER: RN104284542; LOCATION: 504 South Vaughn Avenue, Fritch, Hutchinson County, Texas; TYPE OF FACILITY: licensed irrigator; RULES VIOLATED: 30 TAC §344.70 and TWC, §37.013, by failing to comply with all local requirements, ordinances, and regulations; and 30 TAC §344.92(a) and TWC, §37.013, by failing to competently perform services with the currently accepted practice and knowledge of selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system; PENALTY: \$1,675; STAFF ATTORNEY: Dinniah M. Chahin, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE:

Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(4) COMPANY: WSW Company; DOCKET NUMBER: 2006-1984-PWS-E; TCEQ ID NUMBER: RN101218121; LOCATION: west of Farm-to-Market Road 1417 on Pumping Jack Road, Grayson County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.42(1), by failing to compile a plant operations manual and keep it up-to-date for operator review and reference; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement or an exception to the easement requirement that is approved by the commission for well number one; 30 TAC §290.41(c)(3)(J), by failing to provide the well with a concrete sealing block extending a minimum of three feet from the exterior well casing in all directions; 30 TAC §290.41(c)(3)(P), by failing to provide an all-weather access road to the well site; 30 TAC §290.43(c)(1), by failing to provide the vent opening on the ground storage tank with a 16-mesh or finer corrosion-resistant screening; 30 TAC §290.45(b)(1)(C)(i), by failing to provide a well capacity of 0.6 gallons per minute per connection; 30 TAC §290.45(b)(1)(C)(iv), by failing to provide a pressure tank capacity of 20 gallons per connection; and 30 TAC §290.43(c)(5), by failing to properly locate the inlet and outlet connections so as to prevent short-circuiting or stagnation of water within the ground storage tank; PENALTY: \$1,050; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200805562
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 21, 2008

◆ ◆ ◆
Notice of Opportunity to Comment on Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 1, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the appli-

cable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 1, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DO and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: Seong D. Roh dba South Side Cleaners; DOCKET NUMBER: 2006-1854-DCL-E; TCEQ ID NUMBER: RN103200424; LOCATION: 1409 South Lamar Street, Suite 1005, Dallas, Dallas County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.11(e)(1) and Texas Health and Safety Code, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: \$1,185; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200805563

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 21, 2008



Notice of Opportunity to Request a Public Meeting for a New Municipal Solid Waste Transfer Station Registration Application

APPLICATION

Excell Waste Disposal Containers, Inc., 12510 E. Shadow Lake Lane, Cypress, Texas 77429 has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40236, to construct and operate a Type V municipal solid waste transfer station. The proposed facility, Excell Transfer Station will be located inside of the Sam Houston Tollway (Beltway 8) between Fairbanks N Houston Road and Windfern Road south of Prairie Drive at 8919 Prairie Drive, in Harris County. This facility is requesting authorization to transfer municipal solid waste which includes construction and demolition waste. The registration application is available for viewing and copying at Fairbanks Library, 7122 Gessner Drive, Houston, Texas 77040 and the following internet web site address: <http://excell-disposal.com/>.

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. Comments may also be received if a public meeting is held on the facility. 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 prior to the notice of final determination. 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 reconsider 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, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-30887. Individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Further information may also be obtained from David Kiker, at the address stated above or by calling Gary Horwitch, P.E., Premier Environmental Services, at (281) 240-5200.

TRD-200805574

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 22, 2008



Notice of Water Quality Applications

The following notices were issued during the period of October 9, 2008 through October 20, 2008.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

CITY OF COLORADO CITY has applied for a major amendment to Permit No. WQ0010077001 to change the location of the effluent disposal site. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 1,120,000 gallons per day via surface irrigation of 280 acres of non-public access hay and grass fields. The draft permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 925,000 gallons per day via surface irrigation of 167 acres of non-public access hay and grass fields at the current disposal site and 25 acres immediately surrounding the wastewater treatment plant in the interim phase and surface irrigation of 318.4 acres of non-public access hay and grass fields in the final phase at a site adjacent to and south and east of the wastewater treatment plant site and immediately surrounding the wastewater treatment plant site. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal sites are located approximately 1.7 miles south-southeast of the intersection of East Central Avenue and Washington Street along State Highway 163 and 1.7 miles east of the intersection of State Highway 163 and Farm-to-Market Road 1229 in Mitchell County, Texas.

CITY OF COOPER has applied for a renewal of TPDES Permit No. WQ0010449001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 480,000 gallons per

day. The facility is located approximately 1900 feet southeast of the intersection of Farm-to-Market Roads 1528 and 1880, south of the City of Cooper in Delta County, Texas.

CITY OF LA PORTE has applied to the TCEQ for a renewal of TPDES Permit No. WQ0010206001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 7,560,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 187 acres of a golf course and park land. The facility is located at 1301 South 4th Street; approximately 0.5 miles southeast of the intersection of State Highway 146 and West Fairmont Parkway in Harris County, Texas. The irrigation site is located south of the City of La Porte, bordered by State Highway 146 on the west, McCabe Road on the south, South Broadway Street on the east and West Fairmont Parkway on the north.

CITY OF WACO CITY OF WOODWAY CITY OF BELLMEAD CITY OF LACY LAKEVIEW CITY OF ROBINSON CITY OF HEWITT AND CITY OF LORENA have applied for a new permit, proposed TPDES Permit No. WQ0014889001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility will be located approximately 1.3 miles northwest of the intersection of Losak Road and Rosenthal Parkway and approximately 2.5 miles northeast of the City of Lorena in McClennan County, Texas.

FORESTAIRES ESTATES has applied for a renewal of TPDES Permit No. WQ0013865001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 49,000 gallons per day. The facility is located approximately 800 feet north of County Road 128 and approximately 2,000 feet east of County Road 143 in Brazoria County, Texas.

LGI HOMES LTD AND QUADVEST LP has applied to the TCEQ for a renewal of TPDES Permit No. WQ0014531001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located approximately 5,000 feet west of the intersection of Riley Fussell Road and the Main Bender Tram, east of the intersection of Woodson's Gully and the Texas Illinois Natural Gas Pipeline, in Montgomery County, Texas.

LOWER COLORADO RIVER AUTHORITY which operates the Fayette Power Project, a steam electric station, has applied for a major amendment to TPDES Permit No. WQ0002105000 to authorize a controlled release from the Reclaim Pond to the Coal Pile Run-off Pond and thence to the main reservoir, and the addition of internal Outfall 103, package wastewater treatment plant discharge. The current permit authorizes the discharge of once-through cooling water and previously monitored effluent (low volume waste sources, coal pile runoff, truck wash water, storm water from coal pile runoff pond) at a daily average flow not to exceed 1,165,000,000 gallons during phase one, and 1,509,000,000 gallons during phase two via Outfall 001; cooling water drained from condenser and other cooling equipment during maintenance at a daily maximum flow not to exceed 2,500,000 gallons per day via Outfall 002; low volume wastes, coal pile runoff, truck wash water, and storm water from the coal pile runoff pond on an intermittent and flow variable basis via Outfall 003; low volume wastes, coal pile runoff, truck wash; and low volume wastes, truck wash water, and storm water from the Combustion Byproducts Landfill Pond on an intermittent and flow variable basis via Outfall 004. The facility is located adjacent to the south shore of Cedar Creek Reservoir, approximately two miles north of State Highway 71, and seven miles east of the City of La Grange, Fayette County, Texas.

NICKIE JOE SUBLETT has applied for a New and conversion to a Texas Pollutant Discharge Elimination System (TPDES) individual permit No. WQ0004858000, for a Concentrated Animal Feeding Op-

eration (CAFO), to authorize the applicant to expand an existing dairy cattle facility from 1,500 head to a maximum capacity of 2,000 head, of which 2,000 head are milking cows. The facility is located on the south side of County Road 219 approximately 1 mile east of the intersection of County Road 219 and US Highway 281 in Hamilton County, Texas.

US ARMY CORPS OF ENGINEERS has applied for a renewal of Permit No. WQ0012090001 which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 95 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located near the Granger Lake Project Office adjacent to Farm-to-Market Road 971 at the north end of Granger Dam at a point approximately 8 miles east of the intersection of State Highway 95 and Farm-to-Market Road 971 in Williamson County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200805571
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 22, 2008

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Notice of Water Rights Applications

Notices issued October 9, 2008 through October 15, 2008.

APPLICATION NO. 12324; The City of Mineola, Applicant, P.O. Box 179, Mineola, Texas 75773-0179, has applied for a Water Use Permit to construct and maintain two dams and reservoirs on unnamed tributaries of the Sabine River, Sabine River Basin, for recreation purposes in Wood County. More information on the application and how to participate in the permitting process is given below. The application was received on May 9, 2008. Additional information and fees were received on August 4, 2008. The application was declared administratively complete and filed with the Office of the Chief Clerk on August 19, 2008. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 06-4411H; The City of Lufkin, Applicant, P.O. Drawer 190, 300 E Sheperd, Lufkin, TX 75902, has applied for an amendment to their portion of Certificate of Adjudication No. 06-4411 to modify Special Conditions 5.C. and 5.D. The certificate authorizes the impoundment and diversion of state water from Lake Sam Rayburn located on the Angelina River, tributary of the Neches River, Neches River Basin, in Jasper, Sabine, San Augustine, Angelina, and Nacogdoches Counties. More information on the application and how to participate in the permitting process is given below. The application and a portion of the required fees were received on July 1, 2008. Additional fees were received on August 11, 2008. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on August 14, 2008. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

CERTIFICATE OF ADJUDICATION NO. 12-3711; White River Municipal Water District, Applicant, HCR 2, Box 141, Spur, Texas 79370,

has applied for an extension of time for commencement and completion construction for a dam and reservoir with a capacity of 57,420 acre-feet of water on the North Fork Double Mountain Fork Brazos River, Brazos River Basin. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on June 24, 2008. Additional information and fees were received on August 25, 2008. The application was declared administratively complete and filed with the Office of the Chief Clerk on September 3, 2008. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 5677A; Lower Colorado River Authority (LCRA, Applicant), 3700 Lake Austin Blvd, Austin, Texas 78703, has applied for an amendment to Water Use Permit No. 5677 to increase the amount of water for exempt interbasin transfer into the Brazos River Basin for use by the City of Leander and specify that the water may come from any source of supply available to LCRA for use in Travis County now or in the future. LCRA also seeks authorization for the conveyance (utilizing the bed and banks of Brushy Creek, Brazos River Basin), capture, transfer, and reuse within the Colorado River Basin and within the City of Leander's service area in the Brazos River Basin any return flows originating from use of water authorized by this permit. More information on the application and how to participate in the permitting process is given below. The application and a portion of the fees were received on October 5, 2007. Additional information and fees were received on March 28 and May 15, 2008. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on September 4, 2008. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing," and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel,

MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200805572

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 22, 2008



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality (TCEQ) on October 20, 2008, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Mustafa Nadaf dba Discount Mini Mart; SOAH Docket No. 582-08-1485; TCEQ Docket No. 2007-0609-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Mustafa Nadaf dba Discount Mini Mart on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-200805576

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 22, 2008



Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800 or (800) 325-8506.

Deadline: Semiannual Report due July 15, 2008, for Candidates and Officeholders

David M. Davenport, 8701 W. Parmer Ln. Apt. 11323, Austin, Texas 78729-4958

Ronald E. Reynolds, 6565 W. Loop S., Ste. 115, Bellaire, Texas 77401-3505

Felix Saldivar Jr., 3160 N. Lee Trevino Dr., El Paso, Texas 79936-2061

Vernard G. Solomon, 103 E. Houston St., Marshall, Texas 75670-4143

Fausto Sosa, 101 W. Hillside Rd., Ste. 11C, Laredo, Texas 78041-3117

Deadline: Monthly Report Due September 5, 2008

Richard Davis, Builders Association of Fort Worth and Tarrant County, 6464 Brentwood Stair Rd., Ste. 100, Fort Worth, Texas 76112

TRD-200805553

David Reisman
Executive Director
Texas Ethics Commission
Filed: October 20, 2008

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Texas Facilities Commission

Request for Proposals #303-9-10512

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General, announces the issuance of Request for Proposals (RFP) #303-9-10512. TFC seeks a five year lease of approximately 11,476 square feet of office space in San Antonio, Texas.

The deadline for questions is November 14, 2008 and the deadline for proposals is November 28, 2008 at 3:00 p.m. The award date is January 15, 2009. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. 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=79417.

TRD-200805564

Kay Molina

General Counsel

Texas Facilities Commission

Filed: October 21, 2008

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Texas Health and Human Services Commission

Notice of Hearing on Proposed Provider Payment Rate Methodology

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public rate hearing to receive public comment on proposed Medicaid payment rates for Rural Health Clinics (RHCs) and Federally Qualified Health Clinics (FQHCs). These programs are operated by the Health and Human Service Commission (HHSC). The rate hearing will be held on Friday, November 21, 2008, at 9:00 a.m. in the Palo Duro Canyon Conference Room of the Braker Center, Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Entry is through Security at the entrance of 11209 Metric Boulevard. The hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), §§355.201(e) - (f) and Chapter 32 of the Human Resources Code, §32.0282, which require public hearings on proposed payment rates for medical assistance programs.

Proposal. The reimbursement methodology for RHCs requires that the rates be inflated every calendar year by the Medicare Economic Index (MEI), which is set by the Centers for Medicare and Medicaid Services. For RHCs, the MEI is estimated to be 1.7% for calendar year 2009. The reimbursement methodology for FQHCs requires that the rates be inflated by the MEI every calendar year, plus 1.5%. For calendar year 2009, the MEI for FQHCs is estimated to be 1.7%. The proposed payments will be effective January 1, 2009. The change is being implemented to allow providers to receive payments that better represent their costs for providing these services to Medicaid clients.

Methodology and Justification. The proposed rates were determined in accordance with the rate reimbursement setting methodology at 1 TAC §355.8261 for FQHCs and 1 TAC §355.8101 for RHCs and

in compliance with the Social Security Act §1902(bb) (42 USC §1396a(bb)).

Written Comments. Written comments regarding the proposed reimbursement methodology may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Josie Wheatfall, HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200 or by email to josie.wheatfall@hhsc.state.tx.us. Express mail can be sent, or written comments can be hand delivered, to Ms. Wheatfall, HHSC Rate Analysis, MC H-400, Braker Center Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Wheatfall at (512) 491-1998.

Briefing Package. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Ms. Wheatfall at (512) 491-1445, or HHSC Rate Analysis, MC H-400 P.O. Box 85200, Austin, Texas 78708-5200. Briefing packages also will be available at the hearing.

People with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Josie Wheatfall at (512) 491-1445 by November 18, 2008, so appropriate arrangements can be made.

TRD-200805555

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: October 21, 2008

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Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 17, 2008, at 1:30 p.m. to receive public comment on proposed Medicaid payment rates for maternity service clinics. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.082 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public hearings on proposed Medicaid reimbursements.

Proposal. The proposed payment rates for maternity service clinics are the result of a routine fee review and are proposed to be effective January 1, 2009.

Methodology and Justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8201, which addresses the reimbursement methodology for maternity service clinics.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after November 3, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1438; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of or in addition to oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate

Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids should contact Kimbra Rawlings at (512) 491-1438 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-200805518

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: October 20, 2008



Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective November 1, 2008.

The amendment will modify the reimbursement methodology in the Texas Medicaid State Plan for clinical diagnostic laboratory services.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of \$49,667,848 for federal fiscal year (FFY) 2009, with approximately \$29,522,569 in federal funds and \$20,145,279 in State General Revenue (GR). For FFY 2010, the

estimated additional aggregate expenditure is \$58,842,854, with approximately \$34,476,028 in federal funds and \$24,366,826 in GR. For FFY 2011, the estimated additional aggregate expenditure is \$63,903,339, with approximately \$37,127,840 in federal funds and \$26,775,499 in GR.

Interested parties may obtain copies of the proposed amendments by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at Dan.Huggins@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200805549

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: October 20, 2008



Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Austin	Live Oak Cardiology P.A.	L06198	Austin	00	10/01/08
Corpus Christi	Tru Medical Imaging	L06191	Corpus Christi	00	10/09/08
Dallas	Rosa of North Dallas L.L.C.	L06186	Dallas	00	10/01/08

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Abilene	Smith Pipe of Abilene	L04992	Abilene	04	10/02/08
Arlington	USMD Hospital at Arlington	L05727	Arlington	08	10/06/08
Austin	Austin Diagnostic Clinic	L05646	Austin	11	09/29/08
Austin	Texas Department of State Health Services, Laboratory Services Section	L01594	Austin	32	10/01/08
Austin	Columbia St. David's Healthcare System L.P. DBA South Austin Hospital	L03273	Austin	81	10/08/08
Bonham	Attentus Bonham L.P. DBA Red River Regional Hospital	L03331	Bonham	36	09/26/08
Carthage	East Texas Medical Center Carthage	L02540	Carthage	38	10/10/08
Cedar Park	Veterinary Diagnostic Imaging of Texas P.A.	L05917	Cedar Park	03	09/25/08
Cleburne	Harris Methodist Walls Regional Hospital	L02039	Cleburne	39	10/03/08
College Station	Texas A&M University Environmental Health and Safety	L00448	College Station	130	09/29/08
College Station	BCS Heart L.L.P.	L04890	College Station	17	10/10/08
Conroe	Sadler Clinic/Montgomery County Mgmt. Co.	L04899	Conroe	27	10/03/08
Conroe	Conroe Regional Medical Center	L01769	Conroe	79	10/02/08
Corpus Christi	M. Ayman Ghraawi, M.D. P.A. DBA South Texas Institute of Cancer	L05652	Corpus Christi	08	10/09/08
Dallas	University of Texas Southwestern Medical Center at Dallas	L05947	Dallas	13	09/30/08
Dallas	University of Texas Southwestern Medical Center at Dallas	L05947	Dallas	14	10/07/08
Dallas	Valley View Surgery Center	L05686	Dallas	03	10/10/08
El Paso	Biotech Pharmacy Incorporated	L05335	El Paso	16	09/29/08
El Paso	East El Paso Physicians' Medical Center L.L.C.	L05676	El Paso	10	10/09/08
El Paso	Nuclear Diagnostics L.L.C.	L05695	El Paso	04	10/13/08
Fort Worth	University of North Texas Health Science Center DBA UNT Health	L06123	Fort Worth	02	10/10/08
Georgetown	Southwestern University at Georgetown Science Division	L00372	Georgetown	22	09/30/08
Houston	Memorial Hermann Healthcare System DBA Hermann Hospital	L04655	Houston	36	10/01/08
Houston	Doctors Hospital 1997 L.P. DBA Doctors Hospital Parkway	L01964	Houston	49	10/01/08
Houston	American Diagnostic Tech L.L.C.	L05514	Houston	50	10/02/08
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00439	Houston	140	10/01/08
Houston	Cypress Fairbanks Cardiology Associates	L04353	Houston	20	10/03/08
Houston	The Methodist Hospital	L00457	Houston	161	10/07/08
Houston	River Oaks Imaging and Diagnostic	L05455	Houston	18	10/03/08
Houston	LFC, Inc.	L05970	Houston	04	10/08/08

AMENDMENTS OF EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Houston	Domingo G. Gonzalez, Jr. M.D. P.A. DBA Houston Metropolitan Cardiology Assoc.	L05283	Houston	09	10/10/08
Houston	The PET Scan Center	L05411	Houston	12	10/09/08
Houston	The Methodist Hospital	L00457	Houston	162	10/13/08
Houston	River Oaks Imaging and Diagnostic	L05493	Houston	18	10/10/08
Humble	Memorial Hermann Hospital Systems DBA Memorial Hermann Northeast	L02412	Humble	71	10/03/08
Humble	Cardiovascular Association PLLC	L05421	Humble	11	10/08/08
Jacksonville	East Texas Medical Center, Jacksonville	L00169	Jacksonville	40	10/07/08
Llano	Llano County Hospital Authority DBA Llano Memorial Healthcare System	L04438	Llano	25	10/08/08
Llano	Llano County Hospital Authority DBA Llano Memorial Healthcare System	L04438	Llano	26	10/10/08
Longview	Diagnostic Clinic of Longview P.A.	L05817	Longview	09	09/30/08
Marble Falls	Synergy Advanced Imaging Ltd.	L06146	Marble Falls	01	10/02/08
Midland	Midland County Hospital District DBA Midland Memorial Hospital	L00728	Midland	91	09/29/08
Midland	West Texas Nuclear Pharmacy Partners	L04573	Midland	18	10/03/08
Pampa	Titan Specialties Ltd.	L04920	Pampa	13	09/29/08
Paris	Physician Reliance Network, Inc. DBA Paris Regional Cancer Center	L04664	Paris	17	10/03/08
Perryton	Ochiltree County Hospital District DBA Ochiltree General Hospital	L06006	Perryton	02	10/10/08
Richardson	Raytheon Company	L04096	Richardson	27	10/03/08
San Antonio	Radiation Oncology of San Antonio P.A. DBA Baptist Cancer Center	L05853	San Antonio	05	09/30/08
San Antonio	Medical and Radiation Physics, Inc.	L01417	San Antonio	29	10/09/08
San Antonio	Medical and Radiation Physics, Inc.	L01417	San Antonio	29	10/09/08
Seguin	Guadalupe Regional Medical Center	L02292	Seguin	31	10/06/08
Snyder	Scurry County Hospital District DBA Cogdell Memorial Hospital	L02409	Snyder	30	09/30/08
Stephenville	Caporal Industries Ltd.	L05837	Stephenville	02	10/10/08
Sugarland	Texas Oncology P.A. DBA Texas Oncology Cancer Center Sugarland	L05816	Sugarland	09	09/29/08
The Woodlands	Memorial Hospital The Woodlands	L03772	The Woodlands	65	10/03/08
The Woodlands	St. Lukes Community Medical Center The Woodlands	L05763	The Woodlands	14	10/03/08
The Woodlands	St. Lukes Community Medical Center The Woodlands	L05763	The Woodlands	15	10/08/08
Throughout Tx	Desert Industrial X-Ray L.P.	L04590	Abilene	89	09/30/08
Throughout Tx	Eagle NDT L.L.C.	L06176	Abilene	02	10/01/08
Throughout Tx	Recon Petrotechnologies, Inc.	L06026	Alvarado	08	10/09/08
Throughout Tx	Bryant Consultants, Inc.	L05096	Carrollton	09	10/03/08
Throughout Tx	Millennium Engineers Group, Inc.	L05388	Edinburg	06	10/03/08
Throughout Tx	Metco	L03018	Houston	192	10/10/08
Throughout Tx	Marco Inspection Services L.L.C.	L06072	Kilgore	15	10/07/08
Throughout Tx	Acuren Inspection, Inc.	L01774	La Porte	247	10/02/08
Throughout Tx	City of Midland Dept.of Development Services	L05684	Midland	04	10/03/08
Throughout Tx	T. C. Inspection, Inc.	L05833	Oyster Creek	33	10/08/08
Throughout Tx	Texas Gamma Ray L.L.C.	L05561	Pasadena	87	09/30/08
Throughout Tx	Petrochem Inspection Services, Inc.	L04460	Pasadena	92	10/02/08
Throughout Tx	Air Products Manufacturing Corporation	L04560	Pasadena	14	10/02/08
Throughout Tx	Conam Inspection and Engineering, Inc.	L05010	Pasadena	151	10/07/08
Throughout Tx	Blazer Inspection, Inc.	L04619	Texas City	56	10/10/08
Throughout Tx	NRG Texas Power L.L.C.	L02063	Thompsons	69	10/01/08
Throughout Tx	Quality Consultants	L05028	Tyler	05	10/02/08

AMENDMENTS OF EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Throughout Tx	P and S Perforators, Inc.	L02396	Victoria	27	10/01/08
Throughout Tx	Kleinfelder	L01351	Waco	62	10/01/08
Tomball	Northwest Heart Center	L05296	Tomball	04	09/26/08
Tomball	Clinic for Cardiovascular Care P.A. DBA Cardiovascular Clinic of Texas	L05670	Tomball	06	10/08/08
Tyler	Trinity Mother Frances Health System	L01670	Tyler	139	09/30/08
Victoria	Invista Sarl	L00386	Victoria	82	10/06/08
Waco	Hillcrest Baptist Medical Center	L00845	Waco	83	10/13/08
Wichita Falls	Kell West Regional Hospital L.L.C.	L05943	Wichita Falls	05	10/06/08

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Corpus Christi	Triad Isotopes, Inc. DBA Clinical Nuclear Svcs.	L05368	Corpus Christi	14	10/09/08
El Campo	West Wharton County Hospital District DBA El Campo Memorial Hospital	L02664	El Campo	17	10/07/08
Plainview	Plainview Cardiology P.A.	L05446	Plainview	09	09/30/08
San Antonio	Medical Center Ophthalmology Associates	L01343	San Antonio	20	09/30/08
San Antonio	Southwest Foundation for Biomedical Research	L00468	San Antonio	51	10/10/08

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Center	Shelby Medical Center	L03608	Center	32	10/08/08
Dallas	Landmark Radiation Dallas L.P.	L06075	Dallas	07	10/01/08
Fort Worth	David F Corral, M.D.	L05650	Fort Worth	06	10/13/08
Throughout Tx	Jones Brothers Dirt and Paving Contractors	L04783	Odessa	10	10/09/08

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - MC 2835, PO Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-200805556
 Lisa Hernandez
 General Counsel
 Department of State Health Services
 Filed: October 21, 2008

◆ ◆ ◆
Texas Department of Housing and Community Affairs

Notice of Public Hearing

Multifamily Housing Revenue Bonds (Costa Mariposa Apartments) Series 2008

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Simms Elementary School, 529 N. Westward, Texas City, Texas 77591, at 6:00 p.m. on November 20, 2008, with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be

loaned to Costa Mariposa, Ltd., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, and equipping a multifamily housing development (the "Development") described as follows: 252-unit multifamily residential rental development located on the north side Monticello Drive, directly east of the College of the Mainland and approximately 50 yards northwest of the intersection of Monticello Drive and N. Vauthier Road, Texas City, Galveston County, Texas 77591. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, TX 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200805466
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 16, 2008

◆ ◆ ◆
Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by FIRST COMMUNITY INSURANCE COMPANY, a foreign fire and casualty company. The home office is in St. Petersburg, Florida.

Application to change the name of ANNUITY & LIFE REASSURANCE AMERICA, INC. to HERITAGE UNION LIFE INSURANCE COMPANY, a foreign life company. The home office is in Richmond, Virginia.

Application to change the name of AXA LIFE AND ANNUITY COMPANY to CASUALTY UNDERWRITERS INSURANCE COMPANY,

a foreign fire and casualty company. The home office is in Murray Utah.

Any objections must be filed with the Texas Department of Insurance, within 20 calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200805577
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: October 22, 2008

◆ ◆ ◆
Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of PACKARD CLAIMS ADMINISTRATION, INC, a foreign third party administrator. The home office is HOLIDAY, FLORIDA.

Application to change the name of AMERICAN ADMINISTRATIVE GROUP, INC. to HEALTHSMART BENEFIT SOLUTIONS, INC., as a foreign third party administrator. The home office is LISLE, ILLINOIS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-200805578
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: October 22, 2008

◆ ◆ ◆
Texas Lottery Commission

Instant Game Number 1110 "Maybe It's Your Lucky Day"

The Texas Lottery Commission filed for publication Instant Game Number 1110, "Maybe It's Your Lucky Day." The document was published in the October 17, 2008, issue of the *Texas Register* (33 TexReg 8673). The information in the second and third columns of Figure 2: GAME NO. 1110 - 4.0 was incorrectly reversed. Figure 2 should read as follows:

Figure 2: GAME NO. 1110 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1 Quick Pick Lotto Texas Free Ticket	52,800	4.55
\$2	12,800	18.75
\$3	9,600	25.00
\$4	4,800	50.00
\$5	3,200	75.00
\$6	1,600	150.00
\$10	1,600	150.00
\$20	800	300.00
\$50	150	1,600.00
\$300	18	13,333.33

*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 2.75. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

TRD-200805558
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: October 21, 2008



Instant Game Number 1143 "Double It!"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1143 is "DOUBLE IT!". The play style is "match 3 of 6 with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1143 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1143.

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: \$2.00, \$3.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$200, \$2,000, \$20,000 and STAR 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. 1143 - 1.2D

PLAY SYMBOL	CAPTION
\$2.00	TWO\$
\$3.00	THREE\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$200	TWO HUND
\$2,000	TWO THOU
\$20,000	20 THOU
STAR SYMBOL	DOUBLE

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$3.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$200.

H. High-Tier Prize - A prize of \$1,000, \$2,000 or \$20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game 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 (1143), 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: 1143-0000001-001.

K. Pack - A pack of "DOUBLE IT!" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (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 "DOUBLE IT!" Instant Game No. 1143 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 "DOUBLE IT!" Instant Game is determined once the latex on the ticket is scratched off to expose 24 (twenty-four)

Play Symbols. If a player reveals 3 matching prize amounts within a GAME, the player wins that amount. If a player reveals 2 matching prize amounts and a STAR symbol within a GAME, the player wins DOUBLE that amount! Each Game is played separately. 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 24 (twenty-four) 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 24 (twenty-four) 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 24 (twenty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 24 (twenty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No more than 3 matching play symbols within a GAME.

C. A GAME can only win once.

D. The "STAR" (doubler) play symbol will only appear on winning tickets as dictated by the prize structure.

E. There will be no occurrence of more than 2 matching play symbols appearing with the "STAR" (doubler) play symbol within a GAME.

F. No duplicate GAMES in any order on a ticket.

G. No three pairs within a GAME.

H. The \$2 prize symbol will only appear when it is used to create a win.

I. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "DOUBLE IT!" Instant Game prize of \$3.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of

proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "DOUBLE IT!" Instant Game prize of \$1,000, \$2,000 or \$20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "DOUBLE IT!" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No lia-

bility for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "DOUBLE IT!" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "DOUBLE IT!" 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 Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game

ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 1143. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1143 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3	836,160	9.62
\$4	514,560	15.63
\$5	96,480	83.33
\$10	112,560	71.43
\$20	48,240	166.67
\$50	32,160	250.00
\$100	6,700	1,200.00
\$200	4,020	2,000.00
\$1,000	40	201,000.00
\$2,000	15	536,000.00
\$20,000	8	1,005,000.00

*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 4.87. 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. 1143 without advance notice, at which point no further tickets in that game may be sold.

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. 1143, 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-200805474
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: October 17, 2008



Instant Game Number 1144 "Pot O' Gold"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1144 is "POT O' GOLD". The play style is "key number match with auto win (5X)".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1144 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1144.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 5X SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$500, \$1,000, and \$50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1144 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
5X SYMBOL	WINX5
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$25.00	TWY FIV
\$50.00	FIFTY

\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00, or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$5,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1144), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1144-0000001-001.

K. Pack - A pack of "POT O' GOLD" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "POT O' GOLD" Instant Game No. 1144 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 "POT O' GOLD" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS to any of the WINNING NUMBERS, the player wins the PRIZE shown for that number. If the player reveals a "5X" symbol, the player wins 5 TIMES the PRIZE shown! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified; and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award

of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "5X" (win x 5) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. No more than four (4) matching non-winning prize symbols will appear on a ticket.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e., 10 and \$10).

H. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "POT O' GOLD" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "POT O' GOLD" Instant Game prize of \$1,000, \$5,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "POT O' GOLD" Instant Game prize, the claimant must sign the winning ticket, thoroughly

complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "POT O' 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 more than \$600 from the "POT O' 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 prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players

whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1144. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1144 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	560,000	10.71
\$10	600,000	10.00
\$15	200,000	30.00
\$20	120,000	50.00
\$50	75,000	80.00
\$100	12,700	472.44
\$500	1,200	5,000.00
\$1,000	200	30,000.00
\$5,000	16	375,000.00
\$50,000	6	1,000,000.00

*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 3.82. 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. 1144 without advance notice, at which point no further tickets in that game may be sold.

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. 1144, 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-200805475
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: October 17, 2008



Instant Game Number 1146 "Dazzlin' Diamond 7's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1146 is "DAZZLIN' DIAMOND 7'S". The play style is "key number match with auto win (7X)".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1146 shall be \$7.00 per ticket.

1.2 Definitions in Instant Game No. 1146.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 7 SYMBOL, DIAMOND SYMBOL, \$7.00, \$10.00, \$15.00, \$20.00, \$40.00, \$50.00, \$100, \$500, \$2,000, and \$70,000.

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. 1146 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	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
7 SYMBOL	WINX7
DIAMOND SYMBOL	WIN
\$7.00	SEVEN\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$40.00	FORTY

\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$2,000	TWO THOU
\$70,000	70 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number.

The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$7.00, \$10.00, \$15.00, or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$2,000 or \$70,000.

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 (1146), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1146-0000001-001.

K Pack - A pack of "DAZZLIN' DIAMOND 7'S" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "DAZZLIN' DIAMOND 7'S" Instant Game No. 1146 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 "DAZZLIN' DIAMOND 7'S" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins PRIZE shown for that number. If a player reveals a "DIAMOND" play symbol, the player wins PRIZE shown for that symbol. If a player reveals a "7" symbol, the player wins 7 TIMES the PRIZE shown for that symbol! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;
16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "7" (win x 7) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. No more than four (4) matching non-winning prize symbols will appear on a ticket.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e., 10 and \$10).

H. "DIAMOND" (auto win) play symbol will never appear more than once on a ticket.

I. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "DAZZLIN' DIAMOND 7'S" Instant Game prize of \$7.00, \$ 10.00, \$15.00, \$20.00, \$50.00, \$100, \$500, \$2,000, or \$70,000, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "DAZZLIN' DIAMOND 7'S" Instant Game prize of \$2,000 or \$70,000, 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 "DAZZLIN' DIAMOND 7'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "DAZZLIN' DIAMOND 7'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "DAZZLIN' DIAMOND 7'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the

back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 1146. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1146 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$7	504,000	10.00
\$10	537,600	9.38
\$15	235,200	21.43
\$20	134,400	37.50
\$50	67,200	75.00
\$100	37,800	133.33
\$500	2,352	2,142.86
\$2,000	102	49,411.76
\$70,000	5	1,008,000.00

*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 3.32. 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. 1146 without advance notice, at which point no further tickets in that game may be sold.

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. 1146, 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-200805559
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: October 21, 2008



Instant Game Number 1147 "Mega Bucks"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1147 is "MEGA BUCKS". The play style is "key number match with 5x multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1147 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1147.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, MEGA SYMBOL,

\$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500, \$1,000 and \$20,000.

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. 1147 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
MEGA SYMBOL	WINX5
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000 or \$20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game 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 (1147), 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: 1147-0000001-001.

K. Pack - A pack of "MEGA BUCKS" 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 "MEGA BUCKS" Instant Game No. 1147 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 "MEGA BUCKS" 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 WINNING NUMBER play symbol, the player wins the PRIZE shown for that number. If a player reveals a "MEGA" play symbol, the player wins 5 TIMES the PRIZE shown 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 Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "MEGA" (win x 5) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. No more than two (2) matching non-winning prize symbols will appear on a ticket.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and \$5).

H. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "MEGA BUCKS" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery

Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MEGA BUCKS" Instant Game prize of \$1,000 or \$20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MEGA BUCKS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "MEGA BUCKS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "MEGA BUCKS" 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 Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 1147. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1147 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	611,040	13.16
\$4	643,200	12.50
\$5	128,640	62.50
\$10	209,040	38.46
\$20	96,480	83.33
\$50	18,961	424.03
\$100	2,747	2,926.83
\$500	670	12,000.00
\$1,000	276	29,130.43
\$20,000	8	1,005,000.00

*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 4.70. 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. 1147 without advance notice, at which point no further tickets in that game may be sold.

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. 1147, 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-200805476
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: October 17, 2008



Instant Game Number 1149 "Armadillo Dollars"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1149 is "ARMADILLO DOLLARS". The play style is "match 3 of 9 with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1149 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 1149.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$200, \$1,000 and ARMADILLO 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. 1149 - 1.2D

PLAY SYMBOL	CAPTION
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$1,000	ONE THOU
ARMADILLO SYMBOL	AUTO

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$200.

H. High-Tier Prize - A prize of \$1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1149), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1149-0000001-001.

K. Pack - A pack of "ARMADILLO DOLLARS" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "ARMADILLO DOLLARS" Instant Game No. 1149 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 "ARMADILLO DOLLARS" Instant Game is determined once the latex on the ticket is scratched off to expose 9 (nine) Play Symbols. If a player reveals 3 matching prize amounts, the player wins that amount. If a player reveals 2 matching prize amounts and a ARMADILLO play symbol, the player wins that amount instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

- Exactly 9 (nine) Play Symbols must appear under the latex overprint on the front portion of the ticket;
- 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;
- Each of the Play Symbols must be present in its entirety and be fully legible;
- Each of the Play Symbols must be printed in black ink except for dual image games;
- The ticket shall be intact;
- The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
- The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
- The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
- The ticket must not be counterfeit in whole or in part;
- The ticket must have been issued by the Texas Lottery in an authorized manner;
- 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 9 (nine) 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 9 (nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 9 (nine) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No more than two pairs of matching play symbols on a ticket.

C. No more than three matching play symbols on a ticket.

D. A ticket may only win once.

E. No more than one pair of matching play symbols on a ticket that contains the "ARMADILLO" (auto win) play symbol.

F. No more than two matching play symbols on a ticket that contains the "ARMADILLO" (auto win) play symbol.

G. The "ARMADILLO" (auto win) play symbol will never appear more than once on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "ARMADILLO DOLLARS" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$200, a claimant shall sign the back of the ticket in the space designated on the

ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$50.00, \$100 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "ARMADILLO DOLLARS" Instant Game prize of \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "ARMADILLO DOLLARS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "ARMADILLO DOLLARS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "ARMADILLO DOLLARS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing,

distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 9,120,000 tickets in the Instant Game No. 1149. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1149 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	790,400	11.54
\$2	820,800	11.11
\$4	243,200	37.50
\$5	106,400	85.71
\$10	45,600	200.00
\$20	15,200	600.00
\$50	7,144	1,276.60
\$100	2,280	4,000.00
\$200	380	24,000.00
\$1,000	114	80,000.00

*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 4.49. 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. 1149 without advance notice, at which point no further tickets in that game may be sold.

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. 1149, 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-200805477



Instant Game Number 1151 "Money Tripler"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1151 is "MONEY TRIPLER". The play style is "key number match with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1151 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1151.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 3X, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$200, \$2,000 and \$20,000.

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. 1151 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
3X	WINX3
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$200	TWO HUND
\$2,000	TWO THOU
\$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$200.

H. High-Tier Prize - A prize of \$2,000 or \$20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game 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 (1151), 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: 1151-0000001-001.

K. Pack - A pack of "MONEY TRIPLER" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MONEY TRIPLER" Instant Game No. 1151 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 "MONEY TRIPLER" 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 WINNING NUMBER play symbol, the player wins the PRIZE shown for that number. If a player reveals a "3X" play symbol, the player wins 3 TIMES the PRIZE shown 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 Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "3X" (tripler) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. No more than two (2) matching non-winning prize symbols will appear on a ticket.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and \$5).

H. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "MONEY TRIPLER" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$50.00 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MONEY TRIPLER" Instant Game prize of \$2,000 or \$20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONEY TRIPLER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "MONEY TRIPLER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "MONEY TRIPLER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 1151. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1151 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	643,200	12.50
\$4	675,360	11.90
\$5	192,960	41.67
\$10	96,480	83.33
\$20	80,400	100.00
\$50	26,800	300.00
\$200	6,700	1,200.00
\$2,000	44	182,727.27
\$20,000	8	1,005,000.00

*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 4.67. 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. 1151 without advance notice, at which point no further tickets in that game may be sold.

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. 1151, 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-200805478
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: October 17, 2008

The requested amended CFA service area expands the service area footprint to include the city of Redwater, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36285.

TRD-200805552
 Adriana A. Gonzales
 Rules Coordinator
 Public Utility Commission of Texas
 Filed: October 20, 2008

◆ ◆ ◆
Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 9, 2008, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Digit Line Express, LLC for a Service Provider Certificate of Operating Authority, Docket Number 36262 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service and long distance services.

◆ ◆ ◆
Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 16, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cable One, Inc. for an Amendment to a State-Issued Certificate of Franchise Authority; Project Number 36285 before the Public Utility Commission of Texas.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by Southwestern Bell Telephone Company, d/b/a AT&T Texas, and Verizon Southwest.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36262.

TRD-200805548
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 20, 2008



Notice of Application to Relinquish Retail Electric Provider (REP) Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 15, 2008, to relinquish retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Notification of Comtel Telcom Assets, LP d/b/a Vartec Energy to Relinquish its Retail Electric Provider (REP) Certificate, Docket Number 36279 before the Public Utility Commission of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 7, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36279.

TRD-200805550
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 20, 2008



Notice of Application to Relinquish Retail Electric Provider (REP) Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 15, 2008, to relinquish retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Notification of Arc Energy, LLC to Relinquish its Retail Electric Provider (REP) Certificate, Docket Number 36280 before the Public Utility Commission of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 7, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36280.

TRD-200805551

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 20, 2008



Request for Proposals for an Employee Assistance Program

Request for Proposals (RFP) Number: 473-08-00289

Deadline for proposal submission: 5:00 p.m., Central Time; November 12, 2008

The Public Utility Commission of Texas (PUCT or commission) is issuing an RFP for a person or entity to provide an employee assistance program for PUCT employees, their dependents, and individuals living in the employee's household.

The commission contemplates that the successful proposer will provide a variety of counseling services, case management and follow-up, a referral service, employee training and other services and resources.

The complete RFP is on the PUCT website at: <http://www.puc.state.tx.us/about/procurement/currentrfps.cfm>

To obtain a copy of the RFP, contact Chris Wood, Purchaser at (512) 936-7069; or chris.wood@puc.state.tx.us or PUCT, P.O. Box 13326, Austin, Texas 78711-3326.

TRD-200805561
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 21, 2008



University of North Texas System

Public Notice - Award of Major Consulting Contract

Description of Activities Consultant Will Conduct:

Selected firm is to be responsible for assisting the University of North Texas System with evaluating and assessing the establishment and operation of the W.W. Caruth Jr. Police Institute at the University of North Texas Dallas Campus and developing baseline evaluation criteria and a tool for evaluation of the operation of the W.W. Caruth Jr. Police Institute.

Name and Business Address of Consultant:

RAND Corporation
1200 South Hayes Street
Arlington, VA 22202

Total Value and Beginning and Ending Dates of Contract:

Value: \$250,000.00

Beginning Date: August 1, 2008

Ending Date: Shall remain in effect until the completion, approval, and acceptance of all services; and the delivery of final payment to RAND

Dates on Which Documents, Films, Recordings, or Reports that Consultant is required to present are due:

Date: Interim Report--January 31, 2009

Draft of final Initial Annual Evaluation--May 30, 2009

Final Initial Annual Evaluation--July 31, 2009

Evaluation Tool--July 31, 2009

TRD-200805554

Carrie Stoeckert

Assistant Director of PPS

University of North Texas System

Filed: October 20, 2008



How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 33 (2008) is cited as follows: 33 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 "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the *TAC*: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table 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 one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).