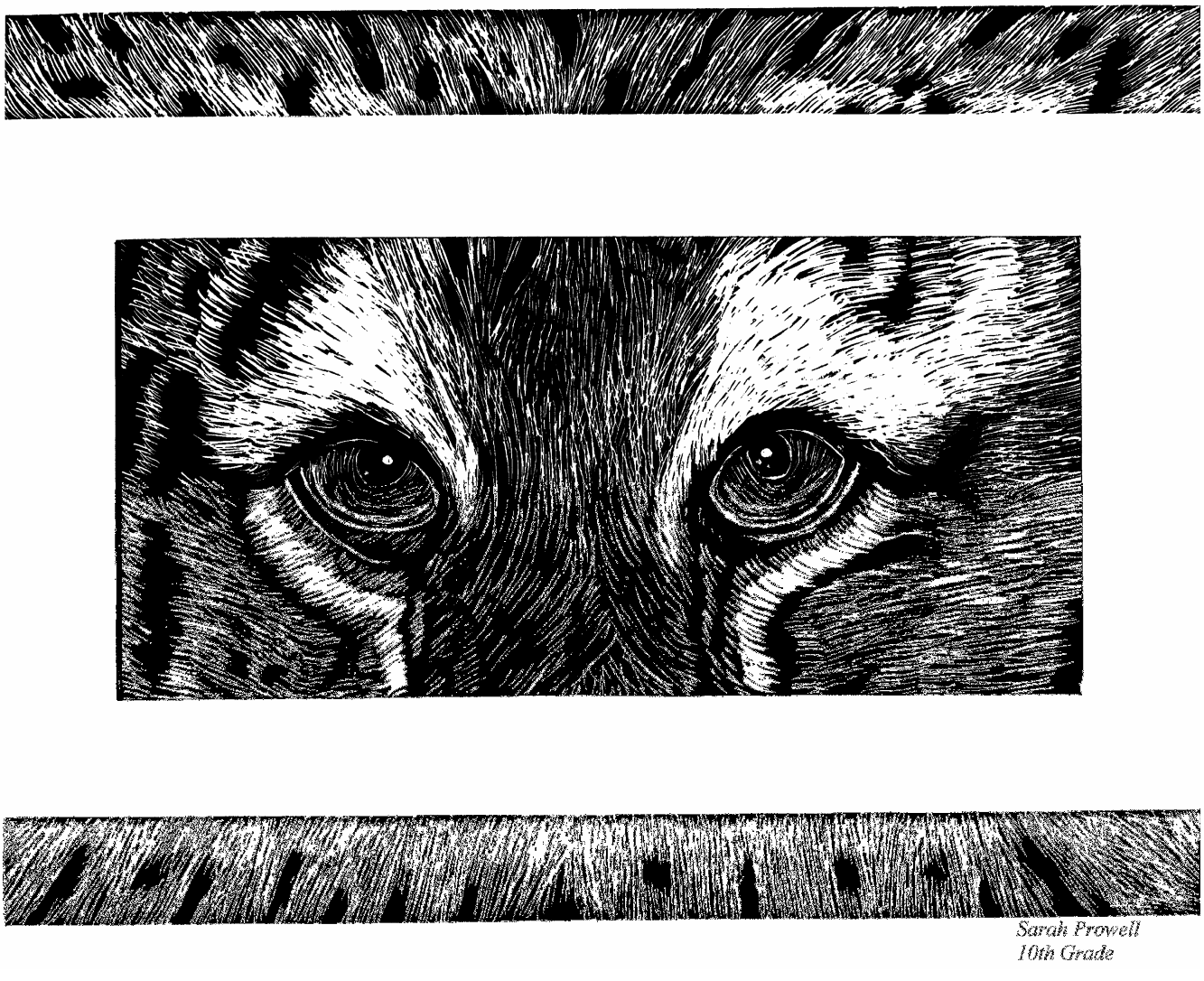
TEXAS REGISTER

Volume 32 Number 26 *June 29, 2007* *Pages 3905 - 4106*



Sarah Prowell
10th Grade

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

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

Texas Register, **(ISSN 0362-4781, USPS 120-090),** is published weekly (52 times per year) for $211.00 ($311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register,*** 136 Carlin Rd., Conklin, N.Y. 13748-1531.

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
http://www.sos.state.tx.us
register@sos.state.tx.us

Secretary of State –
Roger Williams

Director - Dan Procter

Staff
Ada Aulet
Leti Benavides
Dana Blanton
Belinda Bostick
Kris Hogan
Roberta Knight
Jill S. Ledbetter
Juanita Ledesma
Tamara Wah

IN THIS ISSUE

WITHDRAWN RULES

ADOPTED RULES

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for June 14, 2007

Appointed to the Stephen F. Austin State University Board of Regents for a term to expire January 31, 2013, John R. "Bob" Garrett of Tyler (replacing Fredrick A. Wulf of Center whose term expired).

Appointed to the Stephen F. Austin State University Board of Regents for a term to expire January 31, 2013, Carlos Z. Amaral of Plano (replacing Kenneth James of Kingwood whose term expired).

Appointed to the Stephen F. Austin State University Board of Regents for a term to expire January 31, 2013, James Hinton Dickerson, Jr. of New Braunfels (replacing Margarita de la Garza-Grahm of Tyler whose term expired).

Rick Perry, Governor

TRD-200702465

♦ ♦ ♦

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.)

Opinion

Opinion No. GA-0551

The Honorable R. Lowell Thompson

Navarro County Criminal District Attorney

300 West 3rd Avenue, Suite 203

Corsicana, Texas 75110

Re: Whether a justice of the peace may continue to administer polygraph examinations, for the criminal district attorney's office, to criminal defendants subsequent to "arraignment" and setting of bail. (RQ-0558-GA)

SUMMARY

The State Commission on Judicial Conduct (the "Commission") is responsible for applying the Code of Judicial Conduct to specific conduct by judges, including justices of the peace. The Commission has opined that the public's confidence in an impartial and independent judiciary is undermined when a person attempts to serve both as a judge and in law enforcement. The Commission must initially determine whether a justice of the peace is prohibited by the Code of Judicial Conduct from administering polygraph examinations to criminal defendants for the criminal district attorney's office.

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

TRD-200702512
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: June 18, 2007

♦ ♦ ♦

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 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §4.3

The Texas Higher Education Coordinating Board adopts on an emergency basis, amendments to §4.3 concerning limitations on the number of courses that may be dropped under certain circumstances by undergraduate students. The amendments are being adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. Specifically, these amendments are being adopted on an emergency basis under the provisions of Texas Education Code §51.907(e), added by SB 1231, §1, and §5 (80th Texas Legislature), which specifies authority to adopt initial rules on an emergency basis. The proposed amendments add a definition of a "dropped course" and renumbers the existing definitions to accommodate the new definition in alphabetical order.

The amendments are being adopted on an emergency basis under the Texas Government Code, §2001.034, which gives the Coordinating Board the authority to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice, and Texas Education Code, §51.907(e), which authorizes the Coordinating Board to adopt rules concerning limitations on the number of courses that may be dropped under certain circumstances by undergraduate students.

§4.3. Definitions.

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

(1) - (10) (No change.)

(11) Dropped Course--a course in which an undergraduate student at an institution of higher education has enrolled for credit, but did not complete, under these conditions:

(A) the student was able to drop the course without receiving a grade or incurring an academic penalty;

(B) the student's transcript indicates or will indicate that the student was enrolled in the course past the deadline to add and drop prior to the census date; and

(C) the student is not dropping the course in order to withdraw from the institution.

(12) [~~(11)~~] Degree program--Any grouping of subject matter courses which, when satisfactorily completed by a student, will entitle the student to a degree from an institution of higher education.

(13) [~~(12)~~] Faculty or professional staff of an institution of higher education--a non-classified, full-time employee who is a member of the faculty or staff and whose duties include teaching, research, administration or performing professional services, including professional library services.

(14) [~~(13)~~] Fiscal year--the State of Texas' fiscal year, September 1 through August 31.

(15) [~~(14)~~] Institution of higher education or institution--any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003.

(16) [~~(15)~~] Interdisciplinary baccalaureate degrees--the Bachelor of General Studies degree (defined in paragraph (4) of this section) and such general degrees as liberal arts or humanities. These broad-based degrees vary in the amount of prescriptive structure but share the characteristics of flexibility for the student and interdisciplinary course selection.

(17) [~~(16)~~] Non-classified--an employee whose position is not controlled by the institution's classified personnel system or a person employed in a similar position if the institution does not have a classified personnel system.

(18) [~~(17)~~] Religious holy day--A holy day observed by a religion whose places of worship are exempt from property taxation under the Texas Tax Code, §11.20.

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 June 14, 2007.

TRD-200702420
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective Date: June 14, 2007
Expiration Date: October 11, 2007
For further information, please call: (512) 427-6114

♦ ♦ ♦

19 TAC §4.10

The Texas Higher Education Coordinating Board adopts, on an emergency basis, new §4.10 concerning limitations on the number of courses that may be dropped under certain

circumstances by undergraduate students. The new section is adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. Specifically, this new section is being adopted on an emergency basis under the provisions of Texas Education Code, §51.907(e), which was added by SB 1231, §1, and §5 (80th Regular Session Texas Legislature), which specifies authority to adopt initial rules on an emergency basis. The new §4.10 describes situations under which a student would be permitted to drop more than the six courses allowed by the provisions of §1 of SB 1231 (80th Regular Session, Texas Legislature), as part of the provisions of a new section of the Texas Education Code, §51.907.

The new section is adopted on an emergency basis under the Texas Government Code, §2001.034, which gives the Coordinating Board the authority to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice, and Texas Education Code, §51.907(e), which authorizes the Coordinating Board to adopt rules concerning limitations on the number of courses that may be dropped under certain circumstances by undergraduate students.

§4.10. Limitations on the Number of Courses That May Be Dropped Under Certain Circumstances By Undergraduate Students.

(a) Beginning with the fall 2007 academic term, and applying to students who enroll in higher education for the first time during the fall 2007 academic term or any term subsequent to the fall 2007 term, an institution of higher education may not permit an undergraduate student to drop a total of more than six courses, including any course a transfer student has dropped at another institution of higher education as defined for this section, unless:

(1) the institution has adopted a policy under which the maximum number of courses a student is permitted to drop is less than six; or

(2) the student can show good cause for dropping more than that number, including but not limited to a showing of:

(A) a severe illness or other debilitating condition that affects the student's ability to satisfactorily complete the course;

(B) the student's responsibility for the care of a sick, injured or needy person if the provision of that care affects the student's ability to satisfactorily complete the course;

(C) the death of a person who is considered to be a member of the student's family or who is otherwise considered to have a sufficiently close relationship to the student that the person's death is considered to be a showing of good cause;

(D) the active duty service as a member of the Texas National Guard or the armed forces of the United States of either the student of a person who is considered to be a member of the student's family or who is otherwise considered to have a sufficiently close relationship to the student that the person's active military service is considered to be a showing of good cause;

(E) the change of the student's work schedule that is beyond the control of the student, and that affects the student's ability to satisfactorily complete the course; or

(F) other good cause as determined by the institution of higher education.

(b) Each institution of higher education shall adopt a policy and procedure for determining a showing of good cause as specified in subsection (a) of this section and shall provide a copy of the policy to the Coordinating Board.

(c) Each institution of higher education shall publish the policy adopted under this section in the catalogue and other print and Internet-based publications as appropriate for the timely notification of students.

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 June 14, 2007.

TRD-200702421
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective Date: June 14, 2007
Expiration Date: October 11, 2007
For further information, please call: (512) 427-6114

♦ ♦ ♦

CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS
SUBCHAPTER Q. ENGINEERING RECRUITMENT PROGRAMS

19 TAC §§22.312 - 22.315

The Texas Higher Education Coordinating Board adopts, on an emergency basis, new §§22.312 - 22.315, concerning engineering recruitment programs established by the Texas Higher Education Coordinating Board (H.B. 2978, 80th Texas Legislature). The new sections are adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. Specifically, these new sections are being adopted on an emergency basis under the provisions of House Bill 2978 of the 80th Texas Legislature, which added Texas Education Code, §§61.791 - 61.793 and authorized the Board to adopt rules in the manner provided by law for emergency rules. These emergency new rules will establish requirements for admission to a summer program for middle and high school students, reflecting the demographics of the state, at engineering degree programs of general academic teaching institutions. These new rules will also establish the administration necessary for a scholarship program for students pursuing a degree in engineering at a general academic teaching institution, including rules providing for the determination of the amount of each scholarship.

These new sections are adopted on an emergency basis under the Texas Government Code, §2001.034, which gives the Coordinating Board the authority to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice, and Texas Education Code, §§61.791 - 61.793, which authorized the Coordinating Board to adopt rules concerning engineering recruitment programs.

§22.312. Authority, Scope, and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Subchapter Q, ENGINEERING RECRUITMENT PROGRAMS. This subchapter establishes rules for administering the engineering recruitment programs established by

the Texas Higher Education Coordinating Board and prescribed in the Texas Education Code, §§61.791 - 61.793.

(b) Scope. Unless otherwise noted, this subchapter applies to any general academic teaching institution (Texas Education Code, §61.003) that offers an engineering degree program and their students.

(c) Purpose. The purpose of these programs is to provide grants to any general academic teaching institution to implement one-week summer programs for middle and high school students or to provide scholarships to students pursuing a degree in engineering at any general academic teaching institution.

§22.313. Definitions.

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

(1) Board--the Texas Higher Education Coordinating Board.

(2) Commissioner--the Commissioner of Higher Education.

(3) Eligible institution--any general academic teaching institution that offers one or several undergraduate degree programs in engineering.

(4) Engineering degree program--any undergraduate degree program in engineering at an eligible institution.

(5) Engineering student--student enrolled at an eligible institution in an undergraduate engineering degree program.

(6) Summer program--a math, science, and engineering laboratory-oriented day camp, organized by an eligible institution with one or more one-week sessions, to take place on the campus of the eligible institution.

(7) Proposal--a summer program proposal written by an eligible institution.

(8) Application--a scholarship application submitted by an eligible student.

§22.314. Summer Program.

(a) Summer programs shall be designed for middle and/or high school students that will introduce participating students to math, science, and engineering concepts that they may encounter in an engineering degree program.

(b) Once every fiscal year the Commissioner may authorize distribution of a request for proposals for the design and implementation of summer programs.

(c) The Board shall post the request for proposals on the agency website at least 30 working days prior to the due date for proposals and shall notify all eligible institutions.

(d) The request for proposals shall:

(1) contain information necessary to prepare proposals including financial resources available for distribution as well as the criteria that will be used for award of grants,

(2) contain data describing the demographics of the state,

(3) require the proposal to address plans by the eligible institution to ensure that its summer program reflects the demographics of the state,

(4) include the requirements for admission to a summer program, including the requirement of an appropriate math and science background according to the participating student's grade level and the availability of camp scholarships if needed, and

(5) specify any other grant conditions.

(e) Each eligible institution may submit one proposal to the Board and the Commissioner shall award grants for the summer program based on submitted proposals and availability of funding.

(f) All eligible institutions receiving grants for summer programs shall submit a final report to the Board within 90 days of the end of the summer program. The Commissioner shall specify the format for the report.

(g) After making a finding that an eligible institution has failed to perform or failed to conform to grant conditions, the Commissioner may retract or reduce the grant for the summer program.

(h) The governing board of each eligible institution shall cooperate with the board in administering this program.

§22.315. Scholarship Program.

(a) The Board shall post the scholarship announcement and application form for the scholarships on the agency website. The scholarship announcement shall contain information about:

(1) financial resources available for distribution,

(2) maximum number of scholarships available for each eligible institution,

(3) duration and allowable range of award amounts for scholarships, and

(4) eligibility criteria for engineering students submitting an application, including eligibility criteria established by statute.

(b) The Commissioner shall determine the allowable range of award amounts for scholarships by taking into account availability of funds, duration of scholarships, maximum number of awards per eligible institution, and desired effectiveness of the scholarship.

(c) Eligible institutions shall make the Board's application form accessible to all engineering students in paper or through electronic access.

(d) Awarded scholarships do not represent an entitlement for continuation of funding but all engineering students with a previous award may apply for and receive repeat funding.

(e) Each eligible institution shall collect engineering student applications, shall verify student eligibility, and shall make awards as set forth in the scholarship announcement.

(f) At the end of the scholarship period as defined in the scholarship announcement, eligible institution shall report to the Board the number and size of scholarships given, as well as other demographic data in a format specified by the Commissioner.

(g) Each eligible institution shall select engineering student applications to reflect the demographics of the state and shall, to the extent possible, use the scholarships to augment, not replace, other gift aid.

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 June 14, 2007.

TRD-200702422

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective Date: June 14, 2007
Expiration Date: October 11, 2007
For further information, please call: (512) 427-6114

♦ ♦ ♦

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 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 12. LOANS AND INVESTMENTS

The Finance Commission of Texas (commission) proposes new §12.2, concerning definitions, §12.11, concerning calculation of lending limits, §12.61, concerning calculation of investment limits, and §12.62, concerning hedging investments. Existing §12.2, concerning general definitions, §12.61, concerning transition provisions, and §12.62, concerning definition of equity capital, are proposed to be repealed. The commission also proposes to amend §12.1, concerning purpose and scope, §12.3, concerning loans and extensions of credit, §12.5, concerning percentage lending limits, §12.6, concerning loans not subject to lending limits, §12.8, concerning other exceptions, §12.9, concerning aggregation and attribution, §12.10, concerning nonconforming loans, §12.33, concerning debt cancellation contracts and debt suspension agreements, and §12.91, concerning other real estate owned.

The proposals arise from two events. First, the commission completed its rule review of Chapter 12, as required by the Government Code, §2001.039, concluding that certain revisions of Chapter 12 are appropriate. Second, House Bill 2007, legislation affecting Chapter 12, was passed by the 80th Texas Legislature. Among other changes, House Bill 2007 deletes the concept of "certified surplus" in state law to create uniformity with federal standards and reduce regulatory burden. Effective September 1, 2007, state bank loan and investment limits will be calculated based on "unimpaired capital and surplus" instead of "capital and certified surplus." Under the revised law and the proposed amendments to Chapter 12, in most circumstances a bank will be able to calculate legal and investment limits quarterly, based on the quarterly calculation of capital contained in its call report.

Chapter 12, Subchapter A (§§12.1 - 12.11), implements Finance Code, §34.201, by providing detailed standards for calculating and applying a bank's legal lending limit.

The proposed amendment to §12.1(b)(1) deletes as unnecessary the "grandfather" provision for bank investments currently held that were acquired prior to September 1, 1995.

The proposal also amends citations to federal law in §12.1(b)(1) and (2) to conform to a standard format. Similarly, citations to federal law in §§12.3(b)(4), 12.5(d)(2), 12.6(b), and 12.91(b)(5) are proposed to be amended to conform to the standard format.

Existing §12.2, concerning definitions, is proposed for repeal, to be replaced by proposed new §12.2. Proposed §12.2(1) defines "unimpaired capital and surplus" as equivalent to Tier 1 capital, determined under federal risk-based capital standards. Proposed §12.2 also defines "call report," "federal risk-based capital standards," "Tier 1 capital," and "control." Finally, the two definitions in existing §12.2 are included in proposed §12.2 without material change.

Accordingly, all references to capital and certified surplus in Chapter 12 must be replaced with "Tier 1 capital." Proposed amendments to §§12.5(a), (b)(1), (c)(1), (d)(1), (e)(1), (f), 12.8(b), 12.9(e), and 12.10(a)(1) substitute "Tier 1 capital" in place of "capital and certified surplus" as the applicable measurement base.

Section 12.3 defines loans and extensions of credit. Proposed §12.3(a)(1) will clarify that intra-day overdrafts are not considered loans or extensions of credit.

Section 12.3(b)(2) currently provides that accrued and discounted interest are not considered loans and extensions of credit. The proposed amendment to §12.3(b)(2) adds exclusions for interest that has been capitalized from prior notes and interest that has been advanced under a loan agreement, consistent with similar federal law that applies to national banks.

Section 12.6 implements certain exemptions for which no statutory limits apply. Pursuant to §12.6(c), a loan to state or local government is excluded from the lending limit to the extent the loan constitutes a legally created general obligation, if the bank obtains an opinion of counsel that the loan is a valid and enforceable general obligation. Similarly, under §12.6(f), a loan is excluded from the lending limit to the extent it is secured by an unconditional takeout commitment, insurance, or guarantee of a governmental entity, if the bank obtains an opinion of counsel that the unconditional takeout commitment, insurance, or guarantee is a valid and enforceable general obligation of the purchasing, insuring, or guaranteeing entity. The requirement in these two exemptions for an opinion of counsel is not statutorily required.

Proposed amendments to §12.6(c) and (f) will allow a bank to either obtain an opinion of counsel or rely on a bond counsel letter of the attorney general on the validity and enforceability of the obligation, extension of credit, or guarantee in question. Obtaining an opinion of counsel can be expensive and time consuming for community banks. Pursuant to Government Code, Chapter 1202, the attorney general reviews and approves all bonds and similar obligations issued by state agencies, cities, counties, school districts, municipal utility districts, hospital districts, institutions of higher education and all other governmental entities or instrumentalities of the state, plus certain nonprofit corporations created to act on behalf of political subdivisions. Allowing community banks to rely upon the attorney general's bond counsel letters is anticipated to significantly reduce regulatory burden.

Existing §12.6(f) also provides that protection against loss is not materially diminished or impaired by a procedural requirement, such as "an agreement to take over only in the event of default." Proposed §12.6(f) clarifies that the phrase "an agreement to take over" means an agreement to pay on an obligation.

Under §12.9(c)(1), the common enterprise test for aggregation and attribution is stated in one instance as the existence of substantial financial interdependence between or among affiliated borrowers. Under §12.9(d), the independent source of repayment test for aggregation and attribution provides that an employer will not be considered a primary source of repayment solely because of wages and salaries paid to an employee. Some confusion exists regarding whether wages and salaries paid to an owner-employee should be considered in determining whether substantial financial interdependence exists among the employer and the owner-employee for purposes of applying the common enterprise test. The proposed amendment to §12.9(d) clarifies that the common enterprise test and the source of repayment test are intended to be independent of one another.

Proposed new §12.11 provides direction concerning calculation of lending limits. Generally, a bank may rely on its quarterly calculation of capital found in its call report. However, to prevent a bank from lending in excess of a shrinking capital base, the proposal requires a bank to recalculate its lending limit between quarters if there were a change in its capital category for purposes of prompt corrective action under federal law. In addition, the banking commissioner may address unsafe or unsound lending practices or other supervisory concerns by directing any bank to calculate its lending limit more frequently than quarterly. The banking commissioner may also permit recalculation of lending limits during a quarter based on a material change in a bank's capital arising from corporate activities, such as a merger or stock issuance.

Section 12.33, concerning debt cancellation contracts and debt suspension agreements, is modeled on federal rules of the Office of the Comptroller of the Currency (OCC) addressing the same subject, for reasons expressed in the adoption preamble published in the April 25, 2003, issue of the *Texas Register* (28 TexReg 3494). However, shortly after adoption of §12.33, the OCC suspended certain aspects of its rules to consider how to address some difficulties that had arisen in the context of closed-end consumer loan transactions where debt cancellation contracts and debt suspension agreements are offered through unaffiliated, non-exclusive agents, see 68 Fed. Reg. 35283 (June 13, 2003). That suspension has never been lifted.

Accordingly, proposed new subsection (i) of §12.33 suspends specified aspects of §12.33 with respect to the offer and sale of debt cancellation contracts and debt suspension agreements through an unaffiliated, non-exclusive agent, in connection with closed-end consumer credit (other than residential mortgage loans) extended by the bank through the agent.

Existing §12.61 and §12.62 are proposed for repeal. The transition provisions set out in §12.61 are no longer necessary. The definition of equity capital set forth in §12.62 relates to the law prior to House Bill 2007.

Proposed new §12.61 provides direction concerning calculation of investment limits. A state bank will determine its investment limit at the same time and in the same manner as it determines its lending limit under proposed new §12.11.

Proposed new §12.62 addresses the permissibility of hedging investments, and authorizes a state bank to make an otherwise prohibited investment or exceed the statutory limits for an investment if the investment is solely for hedging existing bank risks and not for engaging in speculative activities.

Section 12.91, concerning other real estate owned (OREO), addresses the permissible means by which a bank acquires, manages, and disposes of OREO. Finance Code, §34.004, a new law enacted by House Bill 2007 effective September 1, 2007, may permit a state bank to retain ownership of nonworking royalty interests by classifying the interests as personal property instead of real property for bank regulatory purposes. Accordingly, a proposed amendment to §12.91(a)(10) removes royalty interests approved under Finance Code, §34.004, from the definition of OREO.

A state bank's ability to acquire and hold OREO is subject to 12 U.S.C. §1831a, which restricts and prohibits insured state banks and their subsidiaries from engaging in activities and investments that are not permissible for national banks and their subsidiaries, subject to exceptions. A national bank is required to treat a royalty interest as real estate and dispose of it no later than 10 years after acquisition. Accordingly, a state bank that seeks to retain direct ownership of royalty interests beyond 10 years after acquisition must apply to and obtain approval of both the banking commissioner under Finance Code, §34.004, and the Federal Deposit Insurance Corporation under 12 C.F.R. §362.3(a)(2)(i).

Finally, a proposed amendment to §12.91 adds new subsection (h)(4) to provide that permissible means of disposing of OREO include the transfer of OREO from the bank to a passive investment subsidiary in the manner authorized by 12 C.F.R. §362.4(b)(5)(i). State bank ownership of OREO beyond 10 years after acquisition is prohibited by 12 U.S.C. §1831a.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that, for each year of the first five years that the proposed new and amended sections and the proposed repeal are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Bacon has also determined that, for each of the first five years the proposed new and amended sections and the proposed repeal are in effect, the public benefit anticipated as a result of the new, amended and repealed sections will be the replacement of obsolete statutory references with correct citations, the updating and clarification of requirements, and the harmonizing of the sections and governing law. There is no anticipated cost to persons who are required to comply with the changes as proposed. There will be no adverse economic effect on small businesses.

To be considered, comments on the proposed new sections, repeals, and amendments must be submitted not later than 30 days after the date of publication of this notice. Comments should be addressed to Everette Jobe, Senior Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294, or by e-mail to: ejobe@banking.state.tx.us.

SUBCHAPTER A. LENDING LIMITS

7 TAC §§12.1 - 12.3, 12.5, 12.6, 12.8 - 12.11

The amendments and new sections are proposed under Finance Code §31.003(a), which authorizes the commission to adopt rules necessary or reasonable to implement and clarify applicable law, and under Finance Code, §34.201(d), which au-

thorizes the commission to adopt rules regarding legal lending limits, including rules to define or further define terms used in the statute, or establish limits, requirements, or exemptions other than specified by the statute for particular classes or categories of loans or extensions of credit. The amendments and new sections are also proposed under the authority of Government Code, §2001.039, which requires a state agency to periodically review each of its rules and readopt, readopt with amendments, or repeal a rule based upon its rule review.

As required by Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive position of state banks with regard to national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development in this state.

Finance Code, §34.201, is affected by the proposed amendments and new sections.

§12.1. Purpose and Scope.

(a) (No change.)

(b) Scope.

(1) This subchapter applies to all loans and extensions of credit made by a state bank and its operating subsidiaries [~~on or after September 1, 1995~~]. This subchapter does not apply to loans made by an insured state bank and its domestic operating subsidiaries to the bank's "affiliates," as that term is defined in 12 U.S.C. [~~United States Code (USC),~~] §371c(b)(1), pursuant to the Finance Code, §34.201(a)(13), or to loans made by a state bank to the bank's operating subsidiaries, pursuant to the Finance Code, §34.201(a)(14). Except as otherwise provided, this subchapter does not apply to other loans specifically exempted from the lending limit pursuant to the Finance Code, §34.201.

(2) Loans and extensions of credit to affiliates, executive officers, directors, and principal shareholders of state banks, and their related interests, are subject to the limits prescribed by 12 U.S.C. [~~USC,~~] §§371c, 371c-1, 375a, and 375b, Regulation O (12 C.F.R. [~~Code of Federal Regulations (CFR),~~] §215.1 et seq), and 12 C.F.R. [~~CFR,~~] §337.3, in addition to the lending limits established by the Finance Code, §34.201, and this subchapter, where applicable.

(3) (No change.)

§12.2. Definitions.

Definitions in the Finance Code, Title 3, Subtitles A and G, are incorporated herein by reference. As used in this subchapter and in Finance Code, Chapter 34, concerning investments and loans, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Unimpaired capital and surplus--A state bank's core capital, equal to its Tier 1 capital calculated under the federal risk-based capital standards, and referred to as Tier 1 capital is this chapter.

(2) Federal risk-based capital standards--The federal system for calculating a bank's equity capital and its specified components, set forth in appendix A to 12 C.F.R. part 325 (or appendix A to 12 C.F.R. part 208 in the case of a bank that is a member of the Federal Reserve System).

(3) Tier 1 capital--A state bank's unimpaired capital and surplus. A state bank's Tier 1 capital is calculated under the federal risk-based capital standards, is reported in the bank's most recent call report, and is periodically re-calculated as provided by §12.11 of this title (relating to Calculation of Lending Limits).

(4) Call report--The federal Consolidated Report of Condition and Income required by and filed under 12 U.S.C. §1817 (or under 12 U.S.C. §324 in the case of a bank that is a member of the Federal Reserve System), or a report of financial condition and results of operations of a state bank required by the banking commissioner under Finance Code, §31.108.

(5) Control--Control is presumed to exist when a person directly or indirectly, or acting through or together with one or more persons:

(A) owns, controls, or has the power to vote 25 percent or more of any class of voting securities of another person;

(B) controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person; or

(C) has the power to exercise a controlling influence over the management or policies of another person.

(6) Borrower--A person who is named as a borrower, obligor, or debtor in a loan or extension of credit, or any other person, including but not limited to a drawer, endorser, or guarantor who is considered to be a borrower under the direct benefit, source of repayment, or common enterprise tests set forth in §12.9 of this title (relating to Aggregation and Attribution).

(7) Sale of Federal funds--A transaction between depository institutions involving the transfer of immediately available funds resulting from credits to deposit balances at Federal Reserve Banks, or from credits to new or existing deposit balances due from a correspondent depository institution.

§12.3. Loans and Extensions of Credit.

(a) Loans or extensions of credit for purposes of the Finance Code, §34.201, and this subchapter include:

(1) an overdraft, regardless of whether such overdraft was pre-arranged, other than an intra-day overdraft for which payment or deposit is received by the bank before the time at which the bank closes its accounting records for the business day on which the funds were advanced;

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

(b) Loans or extensions of credit for purposes of the Finance Code, §34.201, and this subchapter do not include:

(1) (No change.)

(2) accrued and discounted interest on an existing loan or extension of credit, including interest that has been capitalized from prior notes and interest that has been advanced under terms and conditions of a loan agreement;

(3) (No change.)

(4) an advance against uncollected funds in the normal course of collection pursuant to the bank's availability schedule issued in compliance with Regulation CC (12 C.F.R. [~~CFR,~~] §229.1 et seq), including the amount of an item that must be credited to the customer under the bank's availability schedule but remains uncollected and unreturned because of a delay or defect in the collection system;

(5) - (6) (No change.)

§12.5. Percentage Lending Limits.

(a) General lending limit. Generally, a bank's total outstanding loans and extensions of credit to one borrower, as provided in the Fi-

nance Code §34.201, may not exceed 25% of the [~~lesser of the~~] bank's Tier 1 capital [~~and certified surplus or the bank's total equity capital~~]. However, certain loans or extensions of credit are subject to special lending limits as set forth in this section. These special lending limits are cumulative of one another and of the general lending limit under this subsection except as otherwise provided.

(b) Loans secured by title to readily marketable goods.

(1) Pursuant to the Finance Code, §34.201(a)(3), loans to one borrower secured by a bill of lading, bonded warehouse receipt, or similar document transferring or securing title to readily marketable goods may not exceed 50% of the [~~lesser of the~~] bank's Tier 1 capital [~~and certified surplus or the bank's total equity capital~~], in addition to the amount for that borrower allowed under the bank's general lending limit for loans and extensions of credit other than as provided by this subsection, provided the bank's interest in the collateral is adequately insured against loss if it is customary to do so. The market value of the goods securing the loan must at all times equal at least 115% of the amount of the outstanding loan that exceeds the general lending limit. The duration of the loan or extension of credit may not exceed six months if secured by goods that are refrigerated or frozen, or ten months if secured by nonperishable goods.

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

(c) Loans secured by liens on stored agricultural products.

(1) Pursuant to the Finance Code, §34.201(a)(4), loans to one borrower secured by liens on agricultural products in secure and properly documented storage in bonded warehouses or elevators may not exceed 50% of the [~~lesser of the~~] bank's Tier 1 capital [~~and certified surplus or the bank's total equity capital~~], in addition to the amount for that borrower allowed under the bank's general lending limit for loans and extensions of credit other than as provided by this subsection, provided the bank's interest in the collateral is adequately insured against loss. The market value of the agricultural products securing the loan must at all times equal at least 125% of the amount of the outstanding loan. The duration of the loan or extension of credit arising from a single transaction or the same agricultural products may not exceed six months if secured by agricultural products that are refrigerated or frozen, or exceed ten months if secured by nonperishable agricultural products.

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

(d) Loans secured by readily marketable collateral.

(1) Pursuant to the Finance Code, §34.201(a)(12), loans or extensions of credit to one borrower may exceed the bank's general lending limit by an additional 15% of the [~~lesser of the~~] bank's Tier 1 capital [~~and certified surplus or the bank's total equity capital~~] if the amount that exceeds the bank's general lending limit is fully secured by readily marketable collateral. The bank must properly perfect its security interest in the collateral to qualify for this added special lending limit and the collateral at all times must have a market value of at least 100% of the amount of the loan or extension of credit that exceeds the bank's general lending limit.

(2) For purposes of this subsection, readily marketable collateral must be financial instruments or bullion that can be promptly sold under ordinary market conditions at a fair market value determined by reliable and continuously available price quotations, based upon actual transactions on an auction or similarly available daily bid and ask price market. Financial instruments are stocks, bonds, notes, and debentures traded on a national securities exchange, over-the-counter margin stocks as defined in Regulation U (12 C.F.R. [~~CFR,~~] §§221.1 et seq), commercial paper, negotiable certificates of deposit, bankers' acceptances, and shares in a money market mutual fund of the type that issues shares in which banks may perfect a security interest, but not including individual mortgages. Financial instruments may be denominated in foreign currencies that are freely convertible into United States dollars.

(e) Loans secured by documents covering livestock.

(1) Pursuant to the Finance Code, §34.201(b)(2), loans or extensions of credit to one borrower secured by shipping documents or instruments that transfer or secure title to or grant a first lien security interest in livestock may not exceed 15% of the [~~lesser of the~~] bank's Tier 1 capital [~~and certified surplus or the bank's total equity capital~~], in addition to the amount allowed under the bank's general lending limit. The market value of the livestock securing the loan must at all times equal at least 115% of the amount of the outstanding loan that exceeds the general lending limit.

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

(f) Loans secured by dairy cattle paper. Pursuant to the Finance Code, §34.201(b)(2), loans and extensions of credit to one borrower arising from the discount by dealers in dairy cattle of paper given in payment for the cattle may not exceed 15% of the [~~lesser of the~~] bank's Tier 1 capital [~~and certified surplus or the bank's total equity capital~~], in addition to the amount allowed under the bank's general lending limit. To qualify, the paper must carry the full recourse endorsement or unconditional guarantee of the seller and must be secured by the cattle sold, pursuant to liens that allow the bank to maintain a perfected security interest in the cattle under applicable law.

§12.6. Loans Not Subject to Lending Limits.

(a) (No change.)

(b) Bankers' acceptances. Pursuant to the Finance Code, §34.201(a)(2), acceptance of drafts eligible for rediscount under 12 U.S.C. [~~USC,~~] §372 and §373, or a bank's purchase of acceptances created by other banks that are eligible for rediscount under those sections, is not subject to the limits of the Finance Code, §34.201, or this subchapter. Bankers' acceptances within this exception do not include:

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

(c) Obligations of state or local government. Pursuant to the Finance Code, §34.201(a)(8), a loan or extension of credit to this state or an agency or political subdivision of this state, including a county or municipality or an agency or political subdivision of a county or municipality, is not subject to the limitations of the Finance Code, §34.201, or this subchapter to the extent the loan or extension of credit constitutes a legally created general obligation of the borrower, if the lending bank has obtained an opinion of counsel or the opinion of the attorney general that the loan or extension of credit is a valid and enforceable general obligation of the borrower.

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

(f) Government guaranteed loans. Pursuant to Finance Code, §34.201(a)(8), a loan or extension of credit to a borrower is not subject to the limitations of the Finance Code, §34.201, or this subchapter to the extent secured by unconditional takeout commitments, insurance, or guarantees of a governmental entity described in subsection (c) or (e) of this section [~~subsection~~], provided the commitment or guarantee is payable only in cash or its equivalent. If the purchasing, insuring, or guaranteeing entity is described in subsection (c) of this section, the lending bank must obtain an opinion of counsel or the opinion of the attorney general that the unconditional takeout commitment, insurance, or guarantee is a valid and enforceable general obligation of the purchasing, insuring, or guaranteeing entity. A takeout commitment, insurance, or guarantee is considered unconditional if the pro-

tection afforded the bank is not substantially diminished or impaired if loss should result from factors beyond the bank's control. Protection against loss is not materially diminished or impaired by procedural requirements such as an agreement to pay on the obligation [~~take over~~] only in the event of default, including default over a specific period of time, a requirement that notification of default be given within a specific period after its occurrence, or a requirement of good faith on the part of the bank.

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

§12.8. Other Exceptions.

(a) (No change.)

(b) Emergency lending limits. In the event that a bank's Tier 1 capital [~~and certified surplus or total equity capital~~] declines sufficiently to seriously impair the bank's ability to effectively operate in its marketplace or serve the needs of its customers or the community in which it is located, the banking commissioner may, upon written application, grant the bank temporary permission to fund loans or extensions of credit in excess of the bank's legal lending limit. The banking commissioner in the exercise of discretion may limit emergency lending authority under this section to particular types or classes of loans or extensions of credit.

§12.9. Aggregation and Attribution.

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

(d) Source of repayment. The expected source of repayment for each loan or extension of credit is considered the same if the primary source of repayment is the same for each borrower. An employer will not be considered a primary source of repayment under this subsection solely because of wages and salaries paid to an employee, unless the standards of subsection (c)(1) of this section are met.

(e) Loans to a corporate group. Pursuant to the Finance Code, §34.201(c), loans or extensions of credit by a bank to a corporate group may not exceed 75% of the [~~lesser of the~~] bank's Tier 1 capital [~~and certified surplus or the bank's total equity capital~~]. This limitation applies only to loans subject to the general lending limit. For purposes of this subsection, a corporate group is comprised of a person and all of its subsidiaries, and a corporation or other entity is a subsidiary of a person if the person owns or beneficially owns directly or indirectly more than 50% of the voting securities or voting interests of the corporation or other entity. Subject to the special limit of this subsection, loans or extensions of credit to a person and its subsidiary, or to different subsidiaries of a person, are not aggregated or attributed to other members of the corporate group unless either the direct benefit, common enterprise, or source of repayment test is met.

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

§12.10. Nonconforming Loans.

(a) A loan or extension of credit, within a bank's legal lending limit when made, will not be considered a violation of the applicable lending limit but will be cited as nonconforming if the loan no longer complies with the bank's legal lending limit because:

(1) the bank's Tier 1 capital [~~and certified surplus or total equity capital, if less,~~] has declined;

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

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

§12.11. Calculation of Lending Limit.

(a) Calculation date. For purposes of determining compliance with Finance Code, §34.201, and this subchapter, a state bank shall determine its lending limit as of the most recent of the following dates:

(1) the last day of the preceding calendar quarter; or

(2) the date on which there is a change in the bank's capital category for purposes of 12 U.S.C. 1831o and 12 C.F.R. §325.102 (or 12 CFR §208.32 in the case of a bank that is a member of the Federal Reserve System).

(b) Effective date.

(1) A bank's lending limit calculated in accordance with subsection (a)(1) of this section is effective as of the earlier of the following dates:

(A) the date on which the bank's call report is submitted; or

(B) the date on which the bank's call report is required to be submitted under applicable federal law.

(2) A bank's lending limit calculated in accordance with subsection (a)(2) of this section is effective on the date that the limit is required to be calculated.

(c) More frequent calculations. The banking commissioner may permit a state bank to recalculate its lending limit at a point during a quarter based on a material change in a bank's capital arising from corporate activities, such as a merger or stock issuance. For safety and soundness reasons, the banking commissioner may provide written notice to a state bank directing the bank to calculate its lending limit at a more frequent interval than required by subsection (a) of this section, and the bank shall thereafter calculate its lending limit at that interval until further notice.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702454
Sarah J. Shirley
General Counsel
Texas Department of Banking
Proposed date of adoption: August 17, 2007
For further information, please call: (512) 475-1300

7 TAC §12.2

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

The repeal of §12.2 is proposed under Finance Code §31.003(a), which authorizes the commission to adopt rules necessary or reasonable to implement and clarify applicable law, and under Finance Code, §34.201(d), which authorizes the commission to adopt rules regarding legal lending limits, including rules to define or further define terms used in the statute, or establish limits, requirements, or exemptions other than specified by the statute for particular classes or categories of loans or extensions of credit. The repeal is also proposed under the authority of Government Code, §2001.039, which requires a state agency to periodically review each of its rules and readopt, readopt with amendments, or repeal a rule based upon its rule review.

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

§12.2. General Definitions.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702455
Sarah J. Shirley
General Counsel
Texas Department of Banking
Proposed date of adoption: August 17, 2007
For further information, please call: (512) 475-1300

♦ ♦ ♦

SUBCHAPTER B. LOANS

7 TAC §12.33

The amendments are proposed under the authority of Government Code, §2001.039, which requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon its rule review, and Finance Code, §181.003, which authorizes the commission to adopt rules as necessary for the implementation and administration of Finance Code, §§181.001, et seq.

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

§12.33. Debt Cancellation Contracts and Debt Suspension Agreements.

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

(i) Notwithstanding the foregoing, until further notice, compliance with the following provisions of this section will not be required when a state bank, in connection with closed-end consumer credit extended by the bank (other than a residential mortgage loan), offers a debt cancellation contract or debt suspension agreement through an unaffiliated, non-exclusive agent:

(1) the requirement set forth in subsection (e) of this section to offer a periodic payment option;

(2) the requirement set forth in subsection (d)(1) of this section that a bank offering a customer a debt cancellation contract or debt suspension agreement without a refund provision also must offer the customer an option to purchase a comparable debt cancellation contract or debt suspension agreement that provides for a refund;

(3) the long-form disclosure requirement set forth in subsection (f)(2) of this section;

(4) the second short form disclosure set forth in subsection (f)(1)(B) of this section, informing the customer that he or she has the option to pay the fee in a single lump sum or in periodic payments;

(5) the third short form disclosure set forth in subsection (f)(1)(C) of this section, informing the customer that he or she has the option to purchase a debt cancellation contract or debt suspension agreement with a refund provision;

(6) the fifth short form disclosure set forth in subsection (f)(1)(E) of this section, indicating that the customer will receive additional information before being required to pay for the debt cancellation contract or debt suspension agreement; and

(7) the requirement set forth in subsection (g)(1) of this section to obtain a customer's written acknowledgment of receipt of disclosures.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702456
Sarah J. Shirley
General Counsel
Texas Department of Banking
Proposed date of adoption: August 17, 2007
For further information, please call: (512) 475-1300

♦ ♦ ♦

SUBCHAPTER C. INVESTMENT LIMITS

7 TAC §12.61, §12.62

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

The repeal is proposed under Finance Code §31.003(a), which authorizes the commission to adopt rules necessary or reasonable to implement and clarify applicable law, and under Finance Code, §34.101(h), which authorizes the commission to adopt rules regarding investments, including rules to define or further define terms used in the statute, to establish limits, requirements, or exemptions other than specified by the statute for particular classes or categories of securities, or to limit or expand investment authority for state banks for particular classes or categories of securities. The repeal is also proposed under the authority of Government Code, §2001.039, which requires a state agency to periodically review each of its rules and readopt, readopt with amendments, or repeal a rule based upon its rule review.

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

§12.61. Transition Provisions.

§12.62. Definition of Equity Capital.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702458
Sarah J. Shirley
General Counsel
Texas Department of Banking
Proposed date of adoption: August 17, 2007
For further information, please call: (512) 475-1300

♦ ♦ ♦

7 TAC §12.61, §12.62

The new sections are proposed under Finance Code §31.003(a), which authorizes the commission to adopt rules necessary or reasonable to implement and clarify applicable law, and under Finance Code, §34.101(h), which authorizes the commission to adopt rules regarding investments, including rules to define or further define terms used in the statute, to establish limits, requirements, or exemptions other than specified by the statute for particular classes or categories of securities, or to limit or expand investment authority for state banks for particular classes

or categories of securities. The new sections are also proposed under the authority of Government Code, §2001.039, which requires a state agency to periodically review each of its rules and readopt, readopt with amendments, or repeal a rule based upon its rule review.

As required by Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive position of state banks with regard to national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development in this state.

Finance Code, Chapter 34, Subchapters A and B, is affected by the proposed new sections.

§12.61. Calculation of Investment Limit.

(a) The term "unimpaired capital and surplus" has the meaning assigned by §12.2 of this title (relating to Definitions).

(b) For purposes of determining compliance with investment restrictions under Finance Code, Chapter 34, a state bank shall determine its investment limit at the same time and in the same manner as it determines its lending limit under §12.11 of this title (relating to Calculation of Lending Limits), to be effective at the same time as its lending limit is effective under §12.11(b) of this title.

§12.62. Hedging Investments.

(a) A hedging investment is an asset held incidental to a permissible banking activity in order to hedge the bank's obligations, rather than as a security held by the bank for investment. The transaction is used to manage risks arising from otherwise permissible banking activities and not entered into for speculative purposes.

(b) A state bank may make an otherwise prohibited investment or exceed the statutory limits for an investment if for the purpose of hedging risks and not for engaging in speculative activities. Documentation underlying the investment decision must demonstrate that the hedging investment offers a particularly well matched and effective risk management mechanism for specific banking risks.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702457
Sarah J. Shirley
General Counsel
Texas Department of Banking
Proposed date of adoption: August 17, 2007
For further information, please call: (512) 475-1300

♦ ♦ ♦

SUBCHAPTER D. INVESTMENTS

7 TAC §12.91

The amendments are proposed under Finance Code, §31.003(a), which authorizes the commission to adopt rules to accomplish the purposes of Finance Code, Title 3, Subtitle A, including rules necessary or reasonable to implement and clarify applicable law, preserve or protect the safety and soundness of state banks, and grant at least the same rights and privileges to state banks that are or may be granted to national banks domiciled in this state. As required by Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive position of state banks with regard to national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development in this state.

Finance Code, §34.003, is affected by the proposed amendments.

§12.91. Other Real Estate Owned.

(a) Definitions. Words and terms used in this subchapter that are defined in the Finance Code, §31.002, have the same meanings as defined in the Finance Code. The following words and terms when used in this subchapter shall have the following meanings unless the context clearly indicates the contrary.

(1) - (9) (No change.)

(10) Other Real Estate Owned (OREO)--Real estate, including improvements, mineral interests, surface, and subsurface rights, owned in whole or in part or leased by a state bank, no matter how acquired, which is not a bank facility as defined by paragraph (3) of this subsection or leasehold property as permitted under the Finance Code, §34.204(a), but excluding nonworking royalty interests classified as personal property pursuant to Finance Code, §34.004.

(11) - (13) (No change.)

(b) - (g) (No change.)

(h) Disposition of OREO. A state bank may dispose of OREO by:

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

(4) transferring the OREO to a majority-owned subsidiary in compliance with 12 C.F.R. §362.4(b)(5)(i);

(5) [~~(4)~~] transferring the OREO for market value to an affiliate, subject to the Finance Code, §33.109, and applicable federal law, including 12 U.S.C. [~~United States Code,~~] §§371c, 371c-1, and 1828(j);

(6) [~~(5)~~] if the OREO is a master lease, obtaining a coterminous sublease or an assignment of a coterminous sublease, provided that if the bank acquires or obtains assignment of a non-coterminous sublease, the holding period during which the master lease must be divested is suspended for the duration of the sublease and will commence running again upon termination of the sublease; or

(7) [~~(6)~~] entering into a transaction that does not qualify for disposal under paragraphs (1)-(5) of this section; provided that its obligation to dispose of the OREO is not met until the bank receives or accumulates from the purchaser an amount in cash, principal and interest payments, and private mortgage insurance totaling 10% of the sales price, as measured in accordance with regulatory accounting principles.

(i) (No change.)

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702459

Sarah J. Shirley
General Counsel
Texas Department of Banking
Proposed date of adoption: August 17, 2007
For further information, please call: (512) 475-1300

♦ ♦ ♦

PART 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 79. MISCELLANEOUS

SUBCHAPTER C. HOLDING COMPANIES

7 TAC §79.47

The Finance Commission of Texas ("Finance Commission") proposes to amend 7 TAC §79.47, Mutual Holding Companies to add a new subsection (e). The new subsection is proposed to clarify that a mutual holding company may own one or more intermediate subsidiary holding companies. The new subsection permits the organization of the subsidiary holding company either as part of the initial reorganization of a mutual savings bank as a mutual holding company or at any subsequent time subject to approval of the Department of Savings and Mortgage Lending (the "Department").

Finance Code Chapter 97, Subchapter B, provides that a mutual savings bank may organize a subsidiary stock savings bank and transfer the assets of the mutual savings bank to the new subsidiary, thus converting the existing entity into a mutual holding company. The result is a two-tiered structure with a mutual holding company parent (the first tier) and a subsidiary stock savings bank (the second tier). Chapter 97 requires that the mutual holding company at all times own more than 50% of the stock of the subsidiary savings bank. Frequently, however, savings banks may prefer to reorganize using a three-tiered structure. Under this structure the mutual holding company parent (first tier) may own as much as 100% but must own more than 50% of a stock subsidiary holding company (the second tier). The stock subsidiary holding company must own 100% percent of the stock savings bank (the third tier).

The three-tiered structure is permitted for federally chartered mutual holding companies. The Home Owners Loan Act (HOLA) mutual holding company provisions for federally chartered institutions (12 U.S.C.A. §1467a(o)) are similar to those found in Finance Code Chapter 97. Although neither the provisions of HOLA nor the original mutual holding company regulations of the federal Office of Thrift Supervision (OTS) specifically provided for a three-tiered holding company structure, OTS recognized this as a permitted structure in the preamble to its initial mutual holding company rules (See 58 *Federal Register* 44107). The OTS approved a number of three-tiered reorganizations under regulations similar to the current provisions of 7 TAC §79.47. The OTS subsequently amended the mutual holding company regulations to incorporate provisions for a three-tiered structure (See 12 C.F.R. §575.14).

The Department believes that the use of a three-tiered structure is permitted under Finance Code Chapter 97 and current rules. However, the Department believes that amending 7 TAC §79.47 to more clearly set forth this position is advantageous because it provides better guidance as to permissible structures for those mutual savings banks considering reorganization as mutual holding companies. The Department believes this is consistent with the goal of preserving parity with federal charters for state chartered savings banks.

Danny Payne, Savings and Mortgage Lending Commissioner, has determined that for the first five-year period that the new subsection, as proposed, will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering the amended rule, and it is not expected that adoption would increase or decrease the net revenue of the Department from the industry.

Mr. Payne estimates that for the first five years that the proposed subsection is in effect, the public will benefit by providing charter parity for state chartered institutions and promoting Texas as an attractive home state for financial institutions. No difference will exist between the cost of compliance for small business and the cost of compliance for the largest business affected by the new sections.

Comments on the proposed amendments may be submitted in writing to Danny Payne, Commissioner, Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705-4294, or emailed to smlinfo@sml.state.tx.us. Comments must be made not later than 30 days after the date of publication of the proposed rule in the *Texas Register.*

The proposal is made pursuant to Finance Code §11.302(a) authorizing the Finance Commission to adopt rules applicable to savings associations and savings banks.

The section of the Finance Code affected by the proposed new subsection is Finance Code, Chapter 97, Subchapter B, Mutual Holding Companies (Finance Code §97.051 *et seq.).*

§79.47. Mutual Holding Companies.

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

(e) A mutual holding company may establish a subsidiary holding company as a direct subsidiary to hold 100% of the stock of its savings bank subsidiary in accordance with the provisions of this subsection.

(1) The subsidiary holding company may be established either at the time of the initial mutual holding company reorganization or at a subsequent date, subject to the approval of the Department.

(2) For the purposes of Finance Code §97.053(a)(3) and (4), the subsidiary holding company shall be treated as a savings bank issuing stock and shall be subject to the requirements of those sections. The mutual holding company parent must at all times own more than fifty percent (50%) of the outstanding stock of the subsidiary holding company.

(3) The charter and by-laws of a subsidiary holding company must be approved by the Department and may only be amended with the prior approval of the Department.

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702487
John Fleming
General Counsel
Texas Department of Savings and Mortgage Lending
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 475-1352

♦ ♦ ♦

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

SUBCHAPTER B. INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §84.209

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §84.209, concerning Model Clauses for motor vehicle installment sales contracts.

The purpose of the amendments to 7 TAC §84.209 is to correct errors in a Spanish translation of the documentary fee clause. The first translation option contained in §84.209(9)(B) has been revised to include the most accurate Spanish translation.

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

For each year of the first five years the amendments are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will be more accurate and will be more easily understood. There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the amendments as proposed.

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

These amendments, as well as all of the rules contained in 7 TAC Chapter 84, Subchapter B (§§84.201 - 84.210), provide model clauses and a model contract. Licensees are not required to adopt the model language contained in the rules. However, for those licensees utilizing the model clauses or contract, the prior model language (as contained in former 7 TAC Part 1, Chapter 1, Subchapter R) is acceptable and the agency will permit licensees to use the prior model language (without a non-standard contract submission) until January 1, 2008, to deplete supplies of existing forms during a transition period after the effective date of the rules. Please note that the publication of the adoption of previous amendments to §84.209 and §84.210 in the *Texas Register* on March 9, 2007 (32 TexReg 1231), listed the agency's implementation date as October 1, 2007. Given these additional proposed amendments, the agency intends to provide licensees until January 1, 2008, for compliance.

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

The statutory provisions (as currently in effect) affected by the proposed amendments are contained in Texas Finance Code, Chapter 348.

§84.209. Model Clauses.

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

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

(9) Documentary fee.

(A) The following notice satisfies the requirements of Texas Finance Code, §348.006 if printed in a size equal to at least 10-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous and within reasonable proximity to the place at which the fee is disclosed. The parenthetical phrase may be inserted at the dealer's option or the disclosure may be made without the parenthetical phrase if the dealer does not charge an amount in excess of $50 for either ordinary motor vehicles or heavy commercial vehicles or if the contract form is not used for heavy commercial vehicles. The model clause is contained in the Itemization of Amount Financed. The documentary fee clause reads: "A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents and performing services relating to the closing of a sale. A documentary fee may not exceed $50 (for a motor vehicle contract or a reasonable amount agreed to by the parties for a heavy commercial vehicle contract). This notice is required by law."

(B) The following notice is a sufficient Spanish translation of the documentary fee disclosure required by Texas Finance Code, §348.006. The parenthetical phrase may be inserted at the dealer's option or the disclosure may be made without the parenthetical phrase if the dealer does not charge an amount in excess of $50 for either ordinary motor vehicles or heavy commercial vehicles or if the contract form is not used for heavy commercial vehicles. The Spanish translation may read: "Un honorario de documentación no es un honorario oficial [~~official~~]. Un honorario de documentación no es requerido por la ley, pero puede ser cargada al comprador [~~comparador~~] como gastos de manejo [~~manojo~~] de documentos y para realizar servicios relacionados con el cierre de una venta. Un honorario de documentación no puede exceder $50 (un contrato de vehículo automotor o una cantidad razonable acordada por las partes para un contrato de vehículo comercial pesado). Esta notificación es requerida por la ley." Or "Un cargo documental no es un cargo oficial. La ley no exige que se imponga un cargo documental. Pero éste podría cobrarse a los compradores por el manejo de la documentación y la prestación de servicios en relación con el cierre de una venta. Un cargo documental no puede exceder de $50 para (un contrato de vehículo automotor o una cantidad razonable acordada por las partes para un contrato de vehículo comercial pesado). Esta notificación se exige por ley."

(10) - (43) (No change.)

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702444
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 936-7611

♦ ♦ ♦

CHAPTER 88. CONSUMER DEBT MANAGEMENT SERVICES

SUBCHAPTER A. REGISTRATION PROCEDURES

7 TAC §88.102

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §88.102, concerning Filing of New Application for debt management services providers.

The purpose of these amendments is to establish a workable foundation to begin the regulation of for-profit entities that provide debt management services, including new filing requirements and clarification regarding information to be provided about accreditation organizations. Along with the proposed amendments to 7 TAC §88.202 and §88.304, as well as proposed new 7 TAC §88.306 and §88.307 published elsewhere in this issue of the *Texas Register*, the proposed amendments serve to implement the provisions of Senate Bill 884 (SB 884), as recently enacted by the 80th Texas Legislature. With SB 884, the Legislature has broadened the scope of Texas Finance Code, Chapter 394, Subchapter C, Consumer Debt Management Services, to include for-profit entities.

Section 88.102(b) has been revised to reflect the new filing requirements contained in SB 884, including certain names, business addresses, e-mail and website addresses of the applicant's debt management business. Language has been added to §88.102(b) to implement the new statutory requirement that each applicant provide the name and home address of each officer and director and each person holding 10% ownership or more. In the disclosure of principal parties, the detailed description of ownership and for-profit affiliate disclosure has been limited to nonprofit or tax exempt organizations, as required by SB 884. Regarding accreditation organizations, paragraph (8) has been added, outlining the requirement that the applicant provide the accreditation organizations for both the provider itself and its credit counselors. Additionally, some technical corrections have been made to §88.102(b) to streamline its language for better clarity.

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

For each year of the first five years the amendments are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will reflect current statutory provisions and that there will be enhanced compliance with the credit laws. There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the amendments as proposed.

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

These amendments are proposed under Texas Finance Code, §394.214, which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C.

The statutory provisions (amendments effective September 1, 2007) affected by the proposed amendments are, or will be, contained in Texas Finance Code, Chapter 394, Subchapter C.

§88.102. Filing of New Application.

(a) (No change.)

(b) The application shall include the following required forms and filings. All questions must be answered.

(1) Application for Registration of Debt Management Services Provider [~~(ADM 76)~~].

(A) Required names and addresses. An applicant for a debt management services provider registration must provide the following:

(i) the applicant's name;

(ii) all other names under which the applicant conducts business;

(iii) a [~~A~~] physical street address [~~must be listed~~] for the proposed address for the applicant's principal business address and that location's telephone number; [~~. If the address has not yet been determined, then the application must so state.~~]

(iv) the address of each location in this state at which the applicant will provide debt management services, or if the applicant will have no such location, a statement to that effect;

(v) all other business addresses of the applicant in this state;

(vi) the electronic mail address of the applicant's responsible person listed in subparagraph (B) of this paragraph; and

(vii) the applicant's primary Internet website address.

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

(C) (No change.)

(2) Application Questionnaire for Debt Management Services Provider [~~(ADM 77)~~]. All applicable questions must be answered.

(3) Disclosure of Owners and Principal Parties of Debt Management Services Provider [~~(ADM 78)~~].

(A) Detailed ownership and for-profit affiliate disclosure of nonprofit or tax exempt organizations. If the applicant is a nonprofit or tax exempt organization, a [~~A~~] detailed description of the ownership interest of each officer, director, agent, or employee of the

applicant must be provided. Any member of the immediate family of an officer, director, agent, or employee of the applicant, in a for-profit affiliate or subsidiary of the applicant, or in any other for-profit business entity that provides services to the applicant or to a consumer in relation to the applicant's debt management business must also be provided.

(B) Ownership disclosure. The section inquiring about owners requires an answer based upon the applicant's entity type. If an individual's interest in an entity is community property, then spouses with a community property interest must also be listed. If the business interest is owned by a married individual as separate property, then a statement authenticating that fact should be provided.

(i) All entity types. All applicants must disclose the name and home address of each officer and director of the applicant and each person that holds at least a 10% ownership interest in the applicant.

(ii) [~~(i)~~] Corporations. All shareholders holding 5% or more voting stock must be named. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be attached that describes each level of ownership and management. This narrative or diagram requires the listing of the names of all officers, directors, and stockholders owning 5% or more stock at each level.

(iii) [~~(ii)~~] Other organizations. The owners, trustees, or governing persons must be named.

(4) Statutory Agent Disclosure [~~(ADM 13)~~]. The statutory agent is the person or entity to whom any legal notice may be delivered. The agent must list a Texas address for legal service. If the statutory agent is an individual, the address must be a residential address.

(5) Surety bond or insurance. An applicant must file with the commissioner either:

(A) a Surety Bond in the prescribed form [~~(ADM 79)~~]:

(i) - (ii) (No change.)

(B) evidence of [~~that the applicant maintains an~~] insurance [~~policy in a form approved by the commissioner,~~] meeting the requirements of Texas Finance Code, §394.206[,] and [~~meeting the requirements of~~] clauses (i) - (iii) of this subparagraph, as follows:

(i) - (iii) (No change.)

(6) - (7) (No change.)

(8) Accreditation organizations. The applicant must provide the names and contact information for:

(A) the independent, third-party accreditation organization of the provider; and

(B) the accreditation organization or program that certifies the provider's credit counselors.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702445
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 936-7611

♦ ♦ ♦

SUBCHAPTER B. ANNUAL REQUIREMENTS

7 TAC §88.202

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §88.202, concerning Annual Report for debt management services providers.

The purpose of these amendments is to establish a workable foundation to begin the regulation of for-profit entities that provide debt management services, including new filing requirements, clarification regarding information to be provided about accreditation organizations and credit counselors. Along with the proposed amendments to 7 TAC §88.102 and §88.304, as well as proposed new 7 TAC §88.306 and §88.307 published elsewhere in this issue of the *Texas Register*, the proposed amendments serve to implement the provisions of Senate Bill 884 (SB 884), as recently enacted by the 80th Texas Legislature. With SB 884, the Legislature has broadened the scope of Texas Finance Code, Chapter 394, Subchapter C, Consumer Debt Management Services, to include for-profit entities.

Section 88.202(b) has been amended to include the number of counselors and their certifying organization or program within the annual report information. Coordinating revisions have been made to §88.304(b) (published separately in this issue) so that a provider will only be required to submit actual documentation of its counselors' certification upon request by the commissioner, with the annual report now including the basic information concerning a provider's credit counselors.

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

For each year of the first five years the amendments are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will reflect current statutory provisions and that there will be enhanced compliance with the credit laws. There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the amendments as proposed.

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

These amendments are proposed under Texas Finance Code, §394.214, which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C.

The statutory provisions (amendments effective September 1, 2007) affected by the proposed amendments are, or will be, contained in Texas Finance Code, Chapter 394, Subchapter C.

§88.202. Annual Report.

(a) (No change.)

(b) Each year, at the time of annual renewal, an authorized debt management services provider must file with the commissioner, in a form prescribed by the commissioner, a report that contains the following:

(1) the information required by Texas Finance Code, §394.205; [~~and~~]

(2) a list of all owners and principal parties, including any change in ownership that occurred during the preceding calendar year; and [~~.~~]

(3) information regarding the provider's credit counselors, including the number of credit counselors employed at the time the annual report is prepared, and the accreditation organization or program that certifies the provider's counselors.

(c) Upon request by the commissioner, the provider [~~applicant~~] must provide any other information the commissioner deems relevant concerning the provider's business and operations during the preceding calendar year for the registered location of the provider in this state where business is conducted under this chapter.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702446
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 936-7611

♦ ♦ ♦

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

7 TAC §88.304

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §88.304, concerning Credit Counseling Standards for debt management services providers.

The purpose of these amendments is to establish a workable foundation to begin the regulation of for-profit entities that provide debt management services, including clarification regarding information to be provided about accreditation organizations and credit counselors, and limits on compensation for credit counselors. Along with the proposed amendments to 7 TAC §88.102 and §88.202, as well as proposed new 7 TAC §88.306 and §88.307 published elsewhere in this issue of the *Texas Register*, the proposed amendments serve to implement the provisions of Senate Bill 884 (SB 884), as recently enacted by the 80th Texas Legislature. With SB 884, the Legislature has broadened the scope of Texas Finance Code, Chapter 394, Subchapter C, Consumer Debt Management Services, to include for-profit entities.

Revisions have been made to §88.304(b) so that a provider will only be required to submit actual documentation of its counselors' certification upon request by the commissioner, with the annual report now including the basic information concerning a provider's credit counselors. (See proposed amendments to 7 TAC §88.202, published separately in this issue.)

Subsection (c) has been added to §88.304 and prohibits the credit counselors of debt management services providers from receiving commissions or bonuses based on the number of debt management services agreements initiated, or on the sale of counseling sessions, educational programs, or materials and supplies provided. A subcommittee of the U.S. Senate performed a study regarding abusive practices in credit counseling and made a specific recommendation that employees not receive any improper incentives, including that employees should not be compensated "based upon the number of clients enrolled in debt management plans . . . ." Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, U.S. Senate; *Profiteering in a Non-Profit Industry: Abusive Practices in Credit Counseling*, p. 54 (S. Rept. 109-55, Apr. 13, 2005). This amendment is intended to carry out that recommendation and prevent abusive sales tactics, as counselors will not be compensated based on the number of consumers induced to sign debt management services agreements with the employing provider. The concept for the proposed amendment to §88.304 stems from provisions contained in the 2005 bankruptcy reform regulations from the U.S. Department of Justice, as well as the Uniform Debt-Management Services Act (UDMSA) drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL).

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

For each year of the first five years the amendments are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will reflect current statutory provisions and that there will be enhanced compliance with the credit laws. There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the amendments as proposed.

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

These amendments are proposed under Texas Finance Code, §394.214, which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C.

The statutory provisions (amendments effective September 1, 2007) affected by the proposed amendments are, or will be, contained in Texas Finance Code, Chapter 394, Subchapter C.

§88.304. Credit Counseling Standards.

(a) (No change.)

(b) A provider must provide the name and contact information of the accreditation organization or program that certifies its counselors. The provider must maintain [~~submit~~] documentation of the certification of a provider's credit counselors, which must be submitted upon request [~~for approval~~] by the commissioner. The commissioner may issue an order disapproving the accreditation organization or program if the commissioner determines that the organization or program does not provide comprehensive education training on the following:

(1) alternatives available to resolve an indebted consumer's credit problems;

(2) how to analyze a consumer's current financial condition;

(3) budget development;

(4) money management; and

(5) wise use of credit.

(c) The provider's credit counselors must receive no commissions or bonuses based on the origination of a debt management services agreement, or sale of a counseling session, an educational program, or materials and supplies provided by the provider to the consumer.

(d) [~~(c)~~] The provider must maintain documentation of individualized counseling and analysis that has been provided under Texas Finance Code, §394.208(a)(2).

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702447
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 936-7611

♦ ♦ ♦

7 TAC §88.306, §88.307

The Finance Commission of Texas (commission) proposes new 7 TAC §88.306, concerning Fees for Debt Management Services, and §88.307, concerning Consumer Education for debt management services providers.

The purpose of the new rules is to establish reasonable fees and minimum standards for the delivery of education to consumers. Along with the proposed amendments to §§88.102, 88.202, and 88.304 published elsewhere in this issue of the *Texas Register*, the proposed new rules serve to implement the provisions of Senate Bill 884 (SB 884), as recently enacted by the 80th Texas Legislature.

With the enactment of SB 884, the Legislature has broadened the scope of Texas Finance Code, Chapter 394, Subchapter C, Consumer Debt Management Services, to include for-profit entities. In particular, the bill added subsection (f) to §394.210, which provides specific rulemaking authority to the commission to "establish maximum fair and reasonable fees" for debt management services providers. Section 88.306 carries out that intent by instituting reasonable fee provisions. The concepts for many of the fees provided by §88.306 stem from fee provisions contained in the Uniform Debt-Management Services Act (UDMSA) drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL). The fees outlined by proposed §88.306 below, however, have been modified as a result of industry input in order to incorporate the best possible balance of necessary fee limitations that will be practical in application.

Section 88.306(a)(1) provides for a maximum fee of $100 for initial enrollment services associated with the establishment of a debt management services agreement with the provider.

Section 88.306(a)(2) outlines an allowable monthly service or maintenance fee of 10% of the consumer's monthly payment, with a maximum fee of $50 per month.

Section 88.306(a)(3) lists the final enumerated fee regarding counseling sessions, educational programs, or materials and supplies provided to consumers who do not enter into debt management services agreements with the provider. For consumers who are provided these services and who do not enter into agreements, the provider may charge a maximum fee of $50. The proposed language of §88.306(a)(3) is modeled after a statutory provision from the State of Kansas. This proposal, however, has been modified to exclude from the fee limitation services provided under federal mandates or programs.

Section 88.306(b) prohibits a provider from charging (without advance approval) a fee or providing credit or other insurance, coupons, club memberships, Internet or computer access, or any other services not directly related to debt management or education about personal finance. The proposed language of §88.306(b) is modeled after both the UDMSA and a recently passed bill from the State of Colorado, although this proposal has an added modifier to allow pre-approval by the commissioner.

The proposal of §88.307 serves to address the wide disparity in the amount of education provided to consumers seeking debt management services in Texas. In fact, financial consumer education is greatly needed throughout the country, as "[t]he Department of the Treasury, as well as consumer and industry groups, have identified the lack of financial literacy in the United States as a serious, widespread problem." United States General Accounting Office, Report to the Chairman and Ranking Minority Member, Special Committee on Aging, U.S. Senate; *Consumer Protection: Federal and State Agencies Face Challenges in Combating Predatory Lending*, p. 89 (GAO-04-280, Jan. 2004) (footnote omitted). Furthermore, a subcommittee of the U.S. Senate performed a study regarding abusive practices in credit counseling, where "current and former credit counselors and CCA [credit counseling agency] clients were interviewed and Subcommittee staff responded to advertisements from various agencies to see what advice was being given." Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, U.S. Senate; *Profiteering in a Non-Profit Industry: Abusive Practices in Credit Counseling*, p. 2 (S. Rept. 109-55, Apr. 13, 2005). The Subcommittee found that the actions of some recent entrants into the credit counseling industry had resulted in an increasing number of consumer complaints about, among other things, "non-existent education." *Id.* The Subcommittee specifically recommended that credit counseling agencies provide consumer education in the form of "affirmative financial counseling and educational programs designed to reduce excessive indebtedness . . . ." *Id.* at 53.

Thus, it has become evident that minimum standards need to be set for the industry so that consumers will have an expectation of receiving consistent content and quality information in the

education supplied by debt management services providers. Armed with the same high level of reliable information, consumers throughout the state can make more informed choices regarding the management of their debt. The purpose of §88.307 is to provide one set of minimum standards, across the entire industry of debt management services providers, for the delivery of consumer education.

Section 88.307(a) outlines the required consumer education, including topics, analysis, and instruction, that must be provided before a provider may enter into a debt management services agreement with a consumer. The proposed language of §88.307(a) is partly modeled after provisions contained in the 2005 bankruptcy reform regulations from the U.S. Department of Justice.

Section 88.307(b) establishes that the education provided under §88.307(a) must provide the consumer with an adequate opportunity to obtain a complete financial assessment and comprehensive counseling, relative to the consumer's personal financial situation.

Section 88.307(c) provides some suggested guidelines regarding the amount of consumer education that should be provided to consumers who enter into debt management services agreements.

Section 88.307(d) encourages debt management services providers to provide community-based financial education initiatives in addition to the required counseling for consumers who enter into agreements.

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

Commissioner Pettijohn has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the new rules will be enhanced compliance with the credit laws and consistency in debt management services provided in Texas.

There may be some anticipated economic costs incurred by a person required to comply with this proposal, regarding the potential costs to deliver the required minimum education to consumers. These potential costs are not predictable due to several variable factors, including the amount of consumer education currently delivered by the provider, a provider's number of employees presently trained to provide such education, and the state of the provider's educational materials. Any potential costs of delivering the consumer education required by §88.307, however, can be offset by the fees contained in §88.306(a). It is anticipated that there will be no adverse economic effect on small businesses as compared to the effect on large businesses.

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

These new sections are proposed under Texas Finance Code, §394.214, which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C. Additionally, Texas Finance Code, §394.210(f) grants the commission the authority to "establish maximum fair and reasonable fees" for debt management services providers.

The statutory provisions (amendments effective September 1, 2007) affected by the proposed new sections are, or will be, contained in Texas Finance Code, Chapter 394, Subchapter C.

§88.306. Fees for Debt Management Services.

(a) A provider may not charge or receive from a consumer, directly or indirectly (except for "fair share" and other such creditor or lender fees or contributions), a fee except for the following:

(1) an initial enrollment fee not to exceed $100, for services associated with the establishment of a debt management services agreement with the provider (e.g. setting up an account and consultation);

(2) a monthly service or maintenance fee of 10% of the consumer's monthly payment to creditors, up to a maximum of $50 per month;

(3) a fee, not to exceed $50, for a counseling session, an educational program, or materials and supplies provided by the provider to the consumer, if the consumer does not enter into a debt management services agreement with the provider. This fee limitation does not apply to any services provided pursuant to a federal mandate or program.

(b) A provider may not charge a consumer for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet, or any other matter not directly related to debt management services or educational services concerning personal finance, unless approved by the commissioner in advance.

§88.307. Consumer Education.

(a) Required counseling for consumers who enter into debt management services agreements. Before entering into a debt management services agreement with a consumer, the provider's credit counselors must provide education to the consumer regarding budget analysis and credit counseling services that include:

(1) an outline of available opportunities to resolve the consumer's credit problems;

(2) an analysis of the consumer's current financial condition;

(3) discussion of the factors that caused such financial condition;

(4) assistance in developing options in responding to the consumer's problems without incurring negative amortization of debt; and

(5) information and instruction on the following topics:

(A) budget development;

(B) money management; and

(C) wise use of credit.

(b) Adequate opportunity for consumers. Credit counseling provided under subsection (a) of this section must give the consumer an adequate opportunity to obtain a complete financial assessment and comprehensive counseling, relative to the consumer's personal financial situation.

(c) Suggested guidelines.

(1) This subsection provides suggested guidelines for the amount of credit counseling to be provided to consumers who enter into debt management services agreements. These suggested guidelines are intended to give debt management services providers considerable flexibility to fit individual needs while providing some guidance.

(2) An optimum guideline the amount of credit counseling to be provided to consumers who enter into debt management services agreements is 45-90 minutes, depending on the unique circumstances of the consumer's debt and financial situation.

(d) Community-based financial education encouraged. Debt management services providers are encouraged to provide community-based financial education initiatives in addition to the counseling required by this section for consumers who enter into debt management services agreements.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702448
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 936-7611

♦ ♦ ♦

CHAPTER 90. CHAPTER 342, PLAIN LANGUAGE CONTRACT PROVISIONS SUBCHAPTER D. SECOND LIEN HOME EQUITY LOANS (SUBCHAPTER G)

7 TAC §90.403, §90.404

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §90.403, concerning Model Clauses and §90.404, concerning Permissible Changes for second lien home equity loans.

The purpose of the amendments to these rules governing plain language contract provisions for Chapter 342 transactions is to implement changes required by recently passed legislation, and to make revisions enhancing consistency and clarity.

In reference to the recent legislation, House Bill 2061 (HB 2061) was signed by Governor Perry and went into immediate effect during the 2007 legislative session. This bill amends the Notice of Confidentiality Rights contained in Texas Property Code, §11.008, and now requires that this notice be included on any instrument transferring an interest in real property, whether or not any social security numbers or driver's license numbers are contained in the instrument. The commission last adopted amendments concerning these confidentiality notices at the February 23, 2007, commission meeting. As part of that adoption, the commission removed the notices from the model contracts. At that time, §11.008 required that the notice be given only if social security numbers or driver's license numbers were actually present in the transferring instrument. The change at that time was intended to reflect the current industry practice of not including such information on security documents, triggering inclusion of the notice only if the lender disclosed the borrower's personal information.

With the recent passage of HB 2061, however, the confidentiality notice is now mandatory on all instruments transferring an interest in real property. Thus, the commission is proposing that the Notice of Confidentiality Rights clauses included throughout the plain language rules be returned to the model contracts and the required nature of the notices be returned to the rule text in compliance with HB 2061. Consequently, with respect to the confidentiality notices, these proposed amendments will result in the rules and model contracts more closely resembling their state prior to the February 23, 2007, adoption. Proposed amendments concerning the Notice of Confidentiality Rights are contained in §90.403(c)(37). The notice is proposed for return to the model contract contained in the figure for 7 TAC §90.404(a)(8).

Two revisions to enhance consistency and clarity are being proposed for the figures in 7 TAC §90.403(b)(11) and §90.404(a)(7). In §90.403(b)(11), which contains the property insurance model provision, the plural personal pronoun "We" is being replaced with "You" for consistency purposes. As amended, §90.403(b)(11) will include language parallel to the other property insurance sections contained throughout the plain language rules.

Regarding §90.404(a)(7), a comment offered prior to the last adoption has been reconsidered concerning the home equity disclosure statement. For the best clarity, the commission now agrees that the disclosure should be amended as follows: "THIS *IS* [SECURITY DOCUMENT SECURES] AN EXTENSION OF CREDIT AS DEFINED BY SECTION 50(a)(6), ARTICLE XVI OF THE TEXAS CONSTITUTION." The deleted language inappropriately refers to a security document, whereas Figure §90.404(a)(7) is a model home equity note.

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

For each year of the first five years the amendments to these rules are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will reflect current statutory provisions and will be more easily understood. There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the amendments as proposed.

These amendments as well as all of the rules contained in recently adopted Chapter 90 provide model clauses and model contracts. Licensees are not required to adopt the model language contained in the rules. However, regarding §§90.101 - 90.604, for those licensees utilizing the model contracts, the prior model language (as contained in former 7 TAC, Part 1, Chapter 1, Subchapter Q) is acceptable and the agency will permit licensees to use the prior model language (without a non-standard contract submission) until January 1, 2008, to deplete supplies of existing forms during a transition period after the effective date of the rules. Please note that the publication of the adoption of previous amendments to §§90.105, 90.403, 90.404, 90.503, 90.504, 90.603, and 90.604 in the *Texas Register* on March 9, 2007, (32 TexReg 1232) listed the agency's implementation date as October 1, 2007. Given these additional proposed amendments, some required by recent legislation, the agency intends to provide licensees until January 1, 2008, for compliance.

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

The amendments are proposed under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the commission the authority to adopt rules to enforce the consumer loans chapter.

The statutory provisions (as currently in effect) affected by the proposed amendments are contained in Texas Finance Code, Chapter 342.

§90.403. Model Clauses.

(a) (No change.)

(b) For a Chapter 342, Subchapter G second lien home equity loan contract:

(1) - (10) (No change.)

(11) Property insurance. The model provision regarding property insurance reads:
Figure: 7 TAC §90.403(b)(11)

(12) - (25) (No change.)

(c) For the security document for a Chapter 342, Subchapter G second lien home equity loan contract:

(1) - (36) (No change.)

(37) Notice of confidentiality rights disclosure. On or after January 1, 2004, [~~if~~] the security document [~~includes the borrower's social security number or driver's license number, it~~] must incorporate a "Notice of Confidentiality Rights" disclosure. The disclosure or notice must:

(A) appear on the top of the first page of the security document, either above or directly below the document heading;

(B) - (C) (No change.)

§90.404. Permissible Changes.

(a) A licensed lender may consider making the following types of changes to the second lien home equity loans plain language model clauses:

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

(7) A sample model note is presented in the following example.
Figure: 7 TAC §90.404(a)(7)

(8) A sample model security document is presented in the following example.
Figure: 7 TAC §90.404(a)(8)

(b) (No change.)

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702449
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 936-7611

♦ ♦ ♦

SUBCHAPTER E. SECOND LIEN PURCHASE MONEY LOANS (SUBCHAPTER G)

7 TAC §90.503, §90.504

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §90.503, concerning Model Clauses and §90.504, concerning Permissible Changes for second lien purchase money loans.

The purpose of the amendments to these rules governing plain language contract provisions for Chapter 342 transactions is to implement changes required by recently passed legislation.

House Bill 2061 (HB 2061) was signed by Governor Perry and went into immediate effect during the 2007 legislative session. This bill amends the Notice of Confidentiality Rights contained in Texas Property Code, §11.008, and now requires that this notice be included on any instrument transferring an interest in real property, whether or not any social security numbers or driver's license numbers are contained in the instrument. The commission last adopted amendments concerning these confidentiality notices at the February 23, 2007, commission meeting. As part of that adoption, the commission removed the notices from the model contracts. At that time, §11.008 required that the notice be given only if social security numbers or driver's license numbers were actually present in the transferring instrument. The change at that time was intended to reflect the current industry practice of not including such information on security documents, triggering inclusion of the notice only if the lender disclosed the borrower's personal information.

With the recent passage of HB 2061, however, the confidentiality notice is now mandatory on all instruments transferring an interest in real property. Thus, the commission is proposing that the Notice of Confidentiality Rights clauses included throughout the plain language rules be returned to the model contracts and the required nature of the notices be returned to rule text in compliance with HB 2061. Consequently, with respect to the confidentiality notices, these proposed amendments will result in the rules and model contracts more closely resembling their state prior to the February 23, 2007, adoption. Proposed amendments concerning the Notice of Confidentiality Rights are contained in §90.503(c)(35). The notice is proposed for return to the model contract contained in the figure for 7 TAC §90.504(a)(8).

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

For each year of the first five years the amendments to these rules are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will reflect current statutory provisions and will be more easily understood. There is no anticipated cost to persons who are required to com-

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

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

These amendments as well as all of the rules contained in recently adopted Chapter 90 provide model clauses and model contracts. Licensees are not required to adopt the model language contained in the rules. However, regarding §§90.101 - 90.604, for those licensees utilizing the model contracts, the prior model language (as contained in former 7 TAC, Part 1, Chapter 1, Subchapter Q) is acceptable and the agency will permit licensees to use the prior model language (without a non-standard contract submission) until January 1, 2008, to deplete supplies of existing forms during a transition period after the effective date of the rules. Please note that the publication of the adoption of previous amendments to §§90.105, 90.403, 90.404, 90.503, 90.504, 90.603, and 90.604 in the *Texas Register* on March 9, 2007, (32 TexReg 1232) listed the agency's implementation date as October 1, 2007. Given these additional proposed amendments, some required by recent legislation, the agency intends to provide licensees until January 1, 2008, for compliance.

The amendments are proposed under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the commission the authority to adopt rules to enforce the consumer loans chapter.

The statutory provisions (as currently in effect) affected by the proposed amendments are contained in Texas Finance Code, Chapter 342.

§90.503. Model Clauses.

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

(c) For the security document for a Chapter 342, Subchapter G second lien purchase money loan contract:

(1) - (34) (No change.)

(35) Notice of confidentiality rights disclosure. On or after January 1, 2004, [~~if~~] the security document [~~includes the borrower's social security number or driver's license number, it~~] must incorporate a "Notice of Confidentiality Rights" disclosure. The disclosure or notice must:

(A) appear on the top of the first page of the security document, either above or directly below the document heading;

(B) - (C) (No change.)

§90.504. Permissible Changes.

(a) A licensee may consider making the following types of changes to the second lien purchase money loans plain language model clauses:

(1) - (7) (No change.)

(8) A sample model security document is presented in the following example.

Figure: 7 TAC §90.504(a)(8)

(b) (No change.)

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702450
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 936-7611

♦ ♦ ♦

SUBCHAPTER F. SECOND LIEN HOME IMPROVEMENT CONTRACTS (SUBCHAPTER G)

7 TAC §90.603, §90.604

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §90.603, concerning Model Clauses and §90.604, concerning Permissible Changes for second lien home improvement contracts.

The purpose of the proposed amendments to these rules governing plain language contract provisions for Chapter 342 transactions is to implement changes required by recently passed legislation.

House Bill 2061 (HB 2061) was signed by Governor Perry and went into immediate effect during the 2007 legislative session. This bill amends the Notice of Confidentiality Rights contained in Texas Property Code, §11.008, and now requires that this notice be included on any instrument transferring an interest in real property, whether or not any social security numbers or driver's license numbers are contained in the instrument. The commission last adopted amendments concerning these confidentiality notices at the February 23, 2007, commission meeting. As part of that adoption, the commission removed the notices from the model contracts. At that time, §11.008 required that the notice be given only if social security numbers or driver's license numbers were actually present in the transferring instrument. The change at that time was intended to reflect the current industry practice of not including such information on security documents, triggering inclusion of the notice only if the lender disclosed the borrower's personal information.

With the recent passage of HB 2061, however, the confidentiality notice is now mandatory on all instruments transferring an interest in real property. Thus, the commission is proposing that the Notice of Confidentiality Rights clauses included throughout the plain language rules be returned to the model contracts and the required nature of the notices be returned to rule text in compliance with HB 2061. Consequently, with respect to the confidentiality notices, these proposed amendments will result in the rules and model contracts more closely resembling their state prior to the February 23, 2007, adoption. Proposed amendments concerning the Notice of Confidentiality Rights clauses are contained in §90.603(b)(15) and §90.603(f)(35). The notices are

proposed for return to the model contracts contained in the figures for 7 TAC §90.604(a)(12) and §90.604(a)(16).

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

For each year of the first five years the amendments to these rules are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will reflect current statutory provisions and will be more easily understood. There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the amendments as proposed.

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

These proposed amendments as well as all of the rules contained in recently adopted Chapter 90 provide model clauses and model contracts. Licensees are not required to adopt the model language contained in the rules. However, regarding §§90.101 - 90.604, for those licensees utilizing the model contracts, the prior model language (as contained in former 7 TAC Part 1, Chapter 1, Subchapter Q) is acceptable; and the agency will permit licensees to use the prior model language (without a non-standard contract submission) until January 1, 2008, to deplete supplies of existing forms during a transition period after the effective date of the rules. Please note that the publication of the adoption of previous amendments to §§90.105, 90.403, 90.404, 90.503, 90.504, 90.603, and 90.604 in the *Texas Register* on March 9, 2007, (32 TexReg 1232) listed the agency's implementation date as October 1, 2007. Given these additional proposed amendments, some required by recent legislation, the agency intends to provide licensees until January 1, 2008, for compliance.

The amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551, grants the commission the authority to adopt rules to enforce the consumer loans chapter.

The statutory provisions (as currently in effect) affected by the proposed amendments are contained in Texas Finance Code, Chapter 342.

§90.603. Model Clauses.

(a) (No change.)

(b) For a Chapter 342, Subchapter G second lien home improvement loan contract for use in a transaction that does not allow for withdrawals or multiple advances:

(1) - (14) (No change.)

(15) Notice of confidentiality rights disclosure. On or after January 1, 2004, [~~if~~] the security document [~~includes the borrower's social security number or driver's license number, it~~] must incorporate a "Notice of Confidentiality Rights" disclosure. The disclosure or notice must:

(A) appear on the top of the first page of the security document, either above or directly below the document heading;

(B) - (C) (No change.)

(c) - (e) (No change.)

(f) For a Chapter 342, Subchapter G second lien home improvement loan deed of trust for use in a transaction that allows for withdrawals or multiple advances:

(1) - (34) (No change.)

(35) Notice of confidentiality rights disclosure. On or after January 1, 2004, [~~if~~] the security document [~~includes the borrower's social security number or driver's license number, it~~] must incorporate a "Notice of Confidentiality Rights" disclosure. The disclosure or notice must:

(A) appear on the top of the first page of the security document, either above or directly below the document heading;

(B) - (C) (No change.)

§90.604. Permissible Changes.

(a) A licensee may consider making the following types of changes to the second lien home improvement contracts plain language model clauses:

(1) - (11) (No change.)

(12) A sample model contract that does not allow for withdrawals or multiple advances is presented in the following example. Figure: 7 TAC §90.604(a)(12)

(13) - (15) (No change.)

(16) A sample model deed of trust that allows for withdrawals or multiple advances is presented in the following example. Figure: 7 TAC §90.604(a)(16)

(b) (No change.)

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702451
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 936-7611

♦ ♦ ♦

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER H. INVESTMENTS

7 TAC §91.801

The Credit Union Commission proposes amendments to §91.801, concerning investments in credit union service organizations (CUSOs). The proposed amendments provide additional guidance on the type and amount of a credit union's investment in a CUSO, disclose that the limitation is based on generally accepted accounting principles, and edit some language for consistency and clarity. The amendments also eliminate the need for a separate audit of a CUSO if the CUSO is wholly owned by the credit union and is included in the consolidated audit of the parent credit union. Because the rule gives credit unions broad latitude to invest in CUSOs, the Commission has added a provision giving the commissioner the authority to limit the activities for a particular credit union based on financial or management reasons. Finally, the amendments provide that if an investment in a CUSO exceeds the limits of subsection (d) solely due to an increase in profitability, the credit union is not required to divest the excess.

The amendments are proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Loar has also determined that for each year of the first five years the amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 21, 2007 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under §15.402 of the Texas Finance Code, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §124.351 and §124.352, which authorize the Commission to establish rules for investments.

The specific sections affected by the proposed amended rule are Texas Finance Code, §124.351 and §124.352.

§91.801. Investments in Credit Union Service Organizations.

(a) (No change.)

(b) A credit union by itself, or with other parties, may [~~only~~] organize, invest in or make loans to a CUSO only if it [~~which~~] is structured and operated in a manner that demonstrates to the public that it maintains a legal existence separate from the credit union. A credit union and a CUSO must operate so that:

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

(c) Notice. A credit union shall provide written notice to the commissioner of its intent to make an initial investment in a CUSO, make an initial loan to a CUSO, make a material change to a CUSO's organizational structure, or perform new activities in an existing CUSO at least 15 days prior to commencing [~~efforts to effect~~] such activity. The written notice must include a complete description of the credit union's investment in or loan to the CUSO, the activity to be conducted, and a representation and undertaking that the activity will be conducted in accordance with applicable law and in a manner that will limit potential exposure of the credit union to no more than the loss of funds invested in, or loaned to, the CUSO. The credit union shall provide any additional information reasonably requested by the commissioner, which may include a written legal opinion that the CUSO has either been established in a manner that will limit the credit union's potential exposure, or that the new activity or change to its organizational structure will not result in the credit union's potential exposure being more than the loss of funds invested in or loaned to the CUSO.

(d) Limitations. The board of directors of a credit union that organizes, invests in, or lends to any CUSO shall establish, in writing, the maximum amount relative to the credit union's net worth, that will be invested in or loaned to any one CUSO. This maximum amount may not exceed the statutory limit established by Texas Finance Code §124.352(b). Total investments in and total loans to CUSOs will be measured consistent with generally accepted accounting principles (GAAP) and [~~Investments and loans described in this section~~] shall not, in the aggregate, exceed the greater of 10% of the total assets or 100% of net worth [~~capital~~] of the credit union, unless the credit union receives the prior written approval of the commissioner. The amount of loans to CUSOs, cosigned, endorsed, or otherwise guaranteed by the credit union, shall be included in the aggregate for the purpose of determining compliance with the limitations set forth in this section.

(e) Prohibitions. No credit union may invest in or make loans to a CUSO:

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

(5) if the CUSO is not adequately [~~sufficiently~~] bonded or insured for its operations;

(6) if the CUSO does not obtain an annual opinion audit, by a licensed Certified Public Accountant, on its financial statements in accordance with generally accepted auditing standards, unless the investment in or loan to the CUSO by any one or more credit unions does not exceed $100,000 or the CUSO is wholly owned and the CUSO is included in the annual consolidated financial statement audit of its parent credit union; or

(7) (No change.)

(f) Permissible activities and services. The commissioner may, based upon supervisory, legal, or safety and soundness reasons, limit any CUSO activities or services, or refuse to permit any CUSO activities or services. Otherwise, a [~~A~~] credit union may invest in or loan to a CUSO that is engaged in providing products and services that include, but are not limited to:

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

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

(i) Exclusion. A credit union which has a net worth ratio greater than six percent (6%) and is deemed adequately capitalized by its insuring organization may invest in or make loans to a CUSO that is not limited by the restriction set forth in subsection (e)(3) of this section; provided the activities of the CUSO are exclusively limited to activities which could be conducted directly by a credit union or are incidental to the conduct of the business of a credit union. Notwithstanding this exclusion, all other provisions of the act and this chapter applicable to a CUSO apply. In the event a credit union's net worth [~~or capital~~] declines below the required thresholds, the credit union may not renew, extend the maturity of, or restructure an existing

loan, advance additional funds or increase the investment in the CUSO without the prior written approval of the commissioner.

(j) Divestiture. If the limitations in subsection (d) of this section are reached or exceeded solely because of the profitability of the CUSO and the related GAAP valuation of the investment under the equity method, divestiture is not required. A credit union may continue to invest up to the limitation without regard to the increase in the GAAP valuation resulting from a CUSO's profitability.

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702506
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 837-9236

♦ ♦ ♦

7 TAC §91.802

The Credit Union Commission proposes amendments to §91.802, concerning other investments. The amendments refine and clarify definitions and standards, restrict the permissible ratings for some investments, and require that maturity dates match for repurchase transactions. The amendments also add a federal parity provision, a mechanism for modifying or terminating a credit union's investment authority, and a provision giving the commissioner authority to waive any of the limitations or requirements of Subchapter H.

The amendments are proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Loar has also determined that for each year of the first five years the amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 21, 2007 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under §15.402 of the Texas Finance Code, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §124.351 and §124.352, which authorize the Commission to establish rules for investments.

The specific sections affected by the proposed amended rule are Texas Finance Code, §124.351 and §124.352.

§91.802. Other Investments.

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

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

(9) Investment--Any security, obligation, account, deposit, or other item authorized for investment by the Act or this section. For the purposes of this section, the term does not include [~~other than~~] an investment authorized by §124.351(a)(1) of the Act.

(10) Mortgage related security--A security which meets the definition of mortgage related security in United States Code Annotated, Title 15, §78c(a)(41); i.e., a privately-issued security backed by mortgages secured by real estate upon which is located a residential dwelling, a mixed residential and commercial structure, a residential manufactured home, or a commercial structure.

(11) Nationally recognized statistical rating organization (NRSRO)--A rating organization such as Standard and Poor's Moody's, or Fitch which is recognized by the Securities and Exchange Commission.

(12) (No change.)

(13) Investment repurchase [~~Repurchase~~] transaction--A transaction in which a credit union agrees to purchase a security from a counterparty and to resell the same or any identical security to that counterparty at a later date and at a specified price.

(14) Borrowing [~~Reverse~~] repurchase transaction--A transaction whereby a credit union either:

(A) agrees to sell a security to a counterparty and to repurchase the same or any identical security from that counterparty at a future date and at a specified price; or[~~.~~]

(B) borrows funds from a counterparty and collateralizes the loan with securities owned by the credit union.

(15) - (18) (No change.)

(b) (No change.)

(c) Authorized activities.

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

(3) Investment repurchase [~~Repurchase~~] transactions. A credit union may enter an investment [~~a~~] repurchase transaction provided:

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

(D) the counterparty is rated in one of the three highest rating categories by an [~~no lower than BBB by Standard & Poor's or an equivalent rating by another~~] NRSRO; and

(E) (No change.)

(4) Borrowing [~~Reverse~~] repurchase transactions. A credit union may enter into a borrowing [~~reverse~~] repurchase transaction, which is a borrowing transaction subject to the Act, provided:

(A) any investments purchased by the credit union with either borrowed funds or cash obtained by the credit union in the transaction [~~securities received~~] are authorized investments under Texas Finance Code §124.351 and this section;

(B) (No change.)

(C) investments referred to in paragraph (4)(A) of this subsection mature no later than the maturity date of the borrowing repurchase transaction; and [~~for Transactions with a maturity greater~~

~~than one month, the credit union receives a monthly assessment of the market value of the securities received, including accrued interest, and maintains adequate margin that reflects a risk management of the securities and the term of the transaction.~~]

(D) the counterparty is rated in one of the three highest rating categories by an NRSRO.

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

(9) Open-end Investment Companies (Mutual Funds). A credit union may invest funds in an open-end investment company established for investing directly or collectively in any investment or [~~authorized~~] investment activity that is authorized under Texas Finance Code §124.351 or this section, including qualified money market mutual funds as defined by Securities and Exchange Commission regulations.

(10) - (11) (No change.)

(12) Corporate bonds. A credit union may invest in corporate bonds which are rated in one of the two [~~three~~] highest rating categories by a NRSRO (e.g. Standard & Poor's ratings AAA, and AA, [~~and A~~]) and have remaining maturities of five years or less.

(13) Municipal bonds. A credit union may invest in municipal bonds which are rated in one of the two [~~three~~] highest rating categories by a NRSRO and have remaining maturities of five years or less.

(14) Mortgage related securities. With the exception of "accrual bonds" (or Z-bonds) or the residual interest of the mortgage related security, a [~~A~~]credit union may invest in mortgage related securities, [~~except not in the "accrual bond" (or Z bonds) or the residual interest of the mortgage related security~~] which are rated in one of the two [~~three~~] highest rating categories by a NRSRO.

(15) Asset-backed securities. Provided the underlying collateral is domestic- and consumer-based, a [~~A~~] credit union may invest in asset-backed securities rated in one of the two highest rating categories by a NRSRO [~~provided the underlying collateral is domestic- and consumer based~~].

(d) - (f) (No change.)

(g) Discretionary Control Over Investments and Investment Advisers.

(1) Except as provided in paragraph (2) of this subsection, a credit union must retain discretionary control over its purchase and sale of investments. A credit union has not delegated discretionary control to an investment adviser when the credit union reviews all recommendations from the investment adviser and is required to authorize a recommended purchase or sale transaction before its execution.

(2) A credit union may delegate discretionary control over the purchase and sale of investments in an [~~and~~] aggregate amount not to exceed 100% of its net worth [~~reserves and undivided earnings~~] at the time of delegation to persons other than the credit union's officials or employees, provided each such person is an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b).

(3) Before transacting business with an investment adviser to which discretionary control has been granted, and [~~an~~] annually thereafter, a credit union must analyze the adviser's background and information available from federal and state securities regulators and securities industry self-regulatory organizations, including any enforcement actions against the adviser, associated personnel, and the firm for which the adviser works.

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

(h) Investment Practice Permitted to Federal Credit Unions. If an applicant credit union proposes to make the same type of investment which a federally chartered credit union has been granted permission to make, the commissioner shall grant the application unless the commissioner finds that due to the financial position or the state of management of the applicant credit union, the proposed investments or deposits would not be sound or prudent investment practices for the applicant credit union. The commissioner may instead grant the application conditionally, grant in modified form, or deny the application.

(i) Modification or Revocation of Investment Authority. If the commissioner finds that due to the financial condition or management of a credit union, an investment practice authorized by this section has ceased to be a safe and prudent practice, the commissioner shall inform the board of directors of the credit union, in writing, that the authority to engage in the practice has been revoked or modified. The credit union's directors and management shall immediately take steps to begin liquidating the investments in question or make the modification required by the commissioner. The commissioner for cause shown may grant the credit union a definite period of time to comply with the commissioner's orders. Credit unions which continue to engage in investment practices after their authority to do so has been revoked or modified will be treated as if the authority to engage in the practice had never been granted, and their actions may be deemed an unsound practice and a willful violation of an order of the commissioner and may be grounds for appropriate supervisory action against the credit union, its directors or officers.

(j) Waivers.

(1) The commissioner in the exercise of discretion may grant a written waiver, consistent with safety and soundness principles, of a requirement or limitation imposed by this subchapter. A decision to deny a waiver is not subject to appeal. A waiver request must contain the following:

(A) A copy of the credit union's investment policy;

(B) The higher limit or ratio sought;

(C) An explanation of the need to raise the limit or ratio; and

(D) Documentation supporting the credit union's ability to manage this activity;

(2) In determining action on a waiver request made under subsection (a) of this section, the commissioner will consider the:

(A) Credit union's financial condition and management, including compliance with regulatory net worth requirements. If significant weaknesses exist in these financial and managerial factors, the waiver normally will be denied.

(B) Adequacy of the credit union's policies, practices, and procedures. Correction of any deficiencies may be included as conditions, as appropriate, if the waiver is approved.

(C) Credit union's record of investment performance. If the credit union's record of performance is less than satisfactory or otherwise problematic, the waiver normally will be denied.

(D) Credit union's level of risk. If the level of risk poses safety and soundness problems or material risks to the insurance fund, the waiver normally will be denied.

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702505
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 837-9236

♦ ♦ ♦

7 TAC §91.803

The Credit Union Commission proposes amendments to §91.803, concerning investment limits and prohibitions. The amendments edit some language for clarity and consistency and add a requirement that the board of directors review the credit union's designated depository at least annually.

The amendments are proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Loar has also determined that for each year of the first five years the amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 21, 2007 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under §15.402 of the Texas Finance Code, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §124.352, which authorizes the Commission to adopt rules limiting investments.

The specific section affected by the proposed amended rule is Texas Finance Code, §124.352.

§91.803. Investment Limits and Prohibitions.

(a) Limitations. A credit union may not invest an amount that is greater than 50% of its net worth [~~reserves and undivided earnings~~] with any obligor or related obligors except for investments issued by or fully guaranteed as to principal and interest by the United States or an agency, enterprise, corporation, or instrumentality of the United States, or in any trust or trusts established for investing directly or collectively in such securities, obligations, or instruments. For the purposes of this section, obligor is defined as an issuer, trust, or originator of an investment, including the seller of a loan participation.

(b) Notwithstanding subsection (a) of this section, a credit union's board of directors, as a single exception to this section, will be allowed to establish the total aggregate deposit limit for [~~credit risk exposure to~~] a single financial institution approved by the board as the credit union's designated depository based on the credit union's liquidity trends and funding needs as documented by its asset/liability management policy, provided that the credit union has appropriately documented its due diligence to demonstrate that the investments in this designated depository do not pose a safety and soundness concern. The credit union's board of directors shall review and approve at least annually the total aggregate deposit limit for its designated depository. The review shall include a current due diligence analysis of the financial institution.

(c) (No change.)

(d) Investment pilot program.

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

(3) The commissioner may find that an investment pilot program previously authorized is no longer a safe and prudent practice for credit unions generally to engage in, or has become inconsistent with applicable state or federal law, or has ceased to be a safe and prudent practice for one or more particular credit unions in light of their financial condition or management. Upon such a finding, the commissioner will send written notice informing the board of directors of any or all of the credit unions engaging in such a practice that the authority to engage in the practice has been revoked or modified. When the commissioner so notifies any credit union, its directors and officers shall forthwith take steps to liquidate the investments in question or to make such modifications as the commissioner requires. Upon demonstration of good cause, the commissioner may grant a credit union some definite period of time in which to arrange its[~~its'~~] affairs to comply with the commissioner's direction. Credit unions which continue to engage in investment practices where their authority to do so has been revoked or modified will be deemed to be [~~as~~] engaging in an unsound practice.

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702504
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 837-9236

♦ ♦ ♦

7 TAC §91.804

The Credit Union Commission proposes a non-substantive amendment to §91.804, concerning custody and safekeeping. The amendment edits a sentence for better clarity.

The amendment is proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Loar has also determined that for each year of the first five years the amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 21, 2007 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendment is proposed under §15.402 of the Texas Finance Code, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §124.351 and §124.352, which authorizes the Commission to adopt rules concerning investments.

The specific sections affected by the proposed amended rule are Texas Finance Code, §124.351 and §124.352.

§91.804. Custody And Safekeeping.

(a) A credit union's purchased investments and repurchased collateral must be in its possession, recorded as owned by the credit union through the federal reserve book-entry system, or be held by a board-approved safekeeper under a bailment for hire contract or a custodial arrangement subject to regulation by the Securities and Exchange Commission. Any safekeeper used by a credit union must be regulated and supervised by either the Securities and Exchange Commission or a federal or state financial institution regulatory agency. For the purposes of this section a bailment for hire contract has the same meaning as in §91.802 (relating to Other Investments). Annually, a credit union must analyze the ability of any safekeeper used by the credit union to fulfill its custodial responsibilities, as evidenced by capital strength and financial conditions. The credit union should consider current financial data, annual reports, reports of nationally-recognized statistical rating organizations, relevant disclosure documents, and other sources of financial information. At least monthly, a [~~A~~] credit union must obtain and reconcile [~~monthly~~] a statement of purchased investments and repurchased collateral held in safekeeping.

(b) (No change.)

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702503
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 837-9236

♦ ♦ ♦

7 TAC §91.805

The Credit Union Commission proposes an amendment to §91.805, concerning loan participation investments. The amendment substitutes the term "net worth" for the term "reserves and undivided earnings" for consistency with other rules.

The amendment is proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Loar has also determined that for each year of the first five years the amended rule is in effect, the public benefit anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 21, 2007 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under §15.402 of the Texas Finance Code, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §124.351, which authorizes the Commission to adopt rules concerning investments.

The specific section affected by the proposed amended rule is Texas Finance Code, §124.351.

§91.805. Loan Participation Investments.

A credit union may purchase a participation interest in a non-member loan from a corporation, credit organization, or financial organization, as permitted by §124.351(a)(8) of the Act, provided it:

(1) is specifically empowered to purchase such investments in the board's written investment policy;

(2) does not obtain an interest greater than 90% of the face amount of each individual loan, if the borrower is not a member of the credit union or a member of another participating credit union;

(3) uses the same underwriting standards for loan participation investments as it does for loans originated by the credit union; and

(4) Limits its aggregate investment in participations to an amount less than 50% of the credit union's net worth [~~total reserves and undivided~~ earnings].

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702502
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 837-9236

♦ ♦ ♦

7 TAC §91.808

The Credit Union Commission proposes amendments to §91.808, concerning reporting investment activities to the board of directors. The amendments substitute the term "net worth" for the term "reserves and undivided earnings" for consistency with other rules, require that the credit union only report the impact of a 300 basis point shift in market interest rates for securities, and add a definition of the term "embedded option."

The amendments are proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Loar has also determined that for each year of the first five years the amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 21, 2007 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under §15.402 of the Texas Finance Code, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §124.351 and §124.352, which authorize the Commission to adopt rules concerning investments.

The specific sections affected by the proposed amended rule are Texas Finance Code, §124.351 and §124.352.

§91.808. Reporting Investment Activities To The Board Of Directors.

(a) A credit union shall provide its board of directors a monthly comprehensive report of investment activities, including:

(1) investments purchased and sold during the month;

(2) unrealized market gains or losses compared to book value for each security at month's end;

(3) fair or market value of each security [~~marketable investment~~];

(4) total book value of investments outstanding at month's end;

(5) unrecorded and unreported obligations to buy or sell investments; and

(6) amount of investments, other than designated depositories, in other institutions that are not fully insured by the Federal Deposit Insurance Corporation, National Credit Union Administration, or federal or state governments or their agencies.

(b) The credit union shall also provide a quarterly report to the board of directors that summarizes the volatility of the entire security [~~investment~~] portfolio, if the aggregate amount of securities [~~total of the investments~~] with one or more of the features included below exceeds the credit union's net worth [~~reserves and undivided earnings~~] :

(1) embedded options;

(2) remaining maturities greater than three years; or

(3) coupon formulas that are related to more than one index or are inversely related to, or multiples of, an index.

(c) The report described in subsection (b) must provide a reasonable and supportable estimate of the potential impact, in percentage and dollar terms, of an immediate and sustained parallel shift in market interest rates of plus and minus 300 basis points on the:

(1) fair value of each security [~~marketable investment~~] in the entire portfolio;

(2) fair value of the entire security portfolio as a whole; and

(3) credit union's net worth [~~reserves and undivided earnings~~].

(d) For the purposes of this section, an embedded option means a characteristic of an investment that gives the issuer or holder the right to alter the level and timing of the cash flows of the investment. Embedded options include call and put provisions and interest rate caps and floors. Since a prepayment option in a mortgage is a type of call provision, a mortgage-backed security composed of mortgages that may be prepaid is an example of an investment with an embedded option.

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702501
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 837-9236

SUBCHAPTER I. RESERVES AND DIVIDENDS

7 TAC §91.901

The Credit Union Commission proposes amendments to §91.901, concerning reserve requirements. The amendments make non-substantive changes and corrections for greater clarity and consistency.

The amendments are proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Loar has also determined that for each year of the first five years the amended rule is in effect, the public benefits anticipated as a result of enforcing the amended rule will be greater clarity and ease of use of the rule. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 21, 2007 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under §15.402 of the Texas Finance Code, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §122.104, which authorizes the Commission to adopt rules concerning reserve allocations.

The specific section affected by the proposed amended rule is Texas Finance Code §122.104.

§91.901. Reserve Requirements.

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

(1) Net worth means the retained earnings balance of the credit union as determined under generally accepted accounting principles. Retained earnings consist [~~consists~~] of undivided earnings, regular reserves, and any other appropriations designated by management, the insuring organization, or the commission. This means that only undivided earnings and appropriations of undivided earnings are included in net worth. Net worth does not include the allowance for loan and lease losses account.

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

(b) In accordance with the requirements of §122.104 of the Act, state-chartered credit unions shall set aside a portion of their current gross income, prior to the declaration or payment of dividends as follows:

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

(5) Insuring organization's capital requirements. As applicable, a credit union shall also comply with any and all net worth or capital requirements imposed by an insuring organization as a condition to maintaining [~~maintain~~] insurance on share and deposit accounts, including all [~~any~~] prompt corrective action requirements contained within Part 702 of the NCUA Rules and Regulations.

(c) Revised business plan for new credit unions. A credit union that has been in operation for less than ten years and has assets of less than $10 million shall file a written revised business plan within 30 calendar days of the date the credit union's net worth ratio has failed to increase consistent with its then-present business plan. Failure to submit a revised business plan,[~~;~~] or submission of a plan not deemed adequate to either increase net worth or increase net worth within a reasonable time; or failure of the credit union to implement its revised business plan, may trigger the regulatory actions described in subsection (b) [~~(c)~~](4) of this section.

(d) Unsafe practice. Any credit union which has less than a 6.0% net worth ratio may be deemed to be engaged in an unsafe practice pursuant to §122.255 of the Finance Code, unless the [~~except that such a~~] credit union [~~which~~] has entered into and is in compliance with a written agreement or order with the department or is in compliance with a net worth restoration or revised business plan approved by the department to increase its net worth ratio [~~will not be deemed to be engaged in an unsafe practice on account of its inadequate capital structure~~]. If a credit union is engaged in an unsafe practice, the department may impose the following administrative sanctions in addition to, or in lieu of, any other authorized supervisory action:

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

(e) Supervisory action. Notwithstanding any requirements in this section the department may take [~~is not precluded from taking~~] enforcement action against a credit union with capital above the minimum requirement if the credit union's [~~specific~~] circumstances indicate [~~deem~~] such action would [~~to~~] be appropriate.

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702500
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 837-9236

7 TAC §91.902

The Credit Union Commission proposes amendments to §91.902, concerning dividends. The amendments reorder the subsections and expand on the information a credit union must submit if it is required to obtain approval to pay a dividend or interest refund.

The amendments are proposed as a result of the Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Loar has also determined that for each year of the first five years the amended rule is in effect, the public benefits anticipated as a result of enforcing the amended rule will be greater clarity and ease of use of the rule. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 21, 2007 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under §15.402 of the Texas Finance Code, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §123.208(c), which authorizes the commissioner to restrict the payment of a dividend.

The specific section affected by the proposed amended rule is Texas Finance Code §123.208(c).

§91.902. Dividends.

~~[(a) Prior written approval of the commissioner must be obtained for the payment of dividends when the credit union is subject to a cease and desist order or is otherwise notified that it is deemed to be in a troubled condition.]~~

(a) [~~(b)~~] Dividend eligibility shall be prescribed by written board policy.

(b) When a credit union is subject to a cease and desist order or is otherwise notified that it is deemed to be in a troubled condition or engaged in an unsafe practice, the credit union must obtain prior written approval of the commissioner before it declares or pays any

dividend or interest refund. A request for approval to pay a dividend or interest refund under this section must be in writing and must include the following supporting information:

(1) the proposed dividend and/or interest refund rate and the estimated total dollar amount of payment;

(2) an analysis of the credit union's ability to make the payment from current earnings without incurring an operating loss for the period; and

(3) an explanation of the progress in resolving the areas of concern detailed in the cease and desist order or the examiner's findings schedule of the most recent report of examination.

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702499
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 837-9236

♦ ♦ ♦

SUBCHAPTER J. CHANGES IN CORPORATE STATUS

7 TAC §91.1003

The Credit Union Commission proposes amendments to §91.1003, concerning mergers and consolidations. The amendments prohibit a credit union from offering an inducement to members of another credit union to promote a merger of the two credit unions.

Cooperation is a fundamental and well-established principle within the credit union system. Attempts by credit unions to pursue unwelcome merger plans by manipulating the members of target credit unions undermine the ability of credit union boards to make decisions in their members' best interest without undue interference from third parties.

Betsy Loar, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Loar has also determined that for each year of the first five years the amended rule is in effect, the public benefits anticipated as a result of enforcing the amended rule will be greater clarity and ease of use of the rule. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 21, 2007 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under §15.402 of the Texas Finance Code, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §122.151, which authorizes the Commission to adopt rules for mergers and consolidations.

The specific section affected by the proposed amended rule is Texas Finance Code §122.151.

§91.1003. Mergers/Consolidations.

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

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

(3) Merger inducement--A promise by a credit union to pay to the members of another credit union a sum of money or other material benefit upon the successful completion of a merger of the two credit unions.

(b) Two or more credit unions organized under the laws of this state, another state, or the United States, may merge/consolidate, in whole or in part, with each other, or into a newly incorporated credit union to the extent permitted by applicable law, subject to the requirements of this rule. A credit union may not offer a merger inducement to another credit union's members as a means of promoting a merger of the two credit unions.

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

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702498
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 837-9236

♦ ♦ ♦

TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 300. ADMINISTRATION

10 TAC §300.5

The Texas Residential Construction Commission (commission) proposes amendments to 10 TAC §300.5 regarding Task Forces. The section establishes the responsibilities, composition, and terms for agency task forces. The amendments are proposed to eliminate references in the rule to the Arbitration Task Force, which has completed its statutory responsibilities and the statutory section requiring the task force expires on September 1, 2007. Further, the current rule language provides for the abolition of the Arbitration Task Force at the conclusion of its statutory duties on September 1, 2007. In addition, the commission is reviewing the necessity of this rule under the requirements of Government Code §2001.39, which requires each state agency to periodically review its rules. Government Code §2110.005 re-

quires an agency that establishes an advisory committee, which is defined to include a task force, to adopt rules for the establishment of those committees. The amendments will strike the term "task force" and replace it with "advisory committee" throughout in order to use the same language as in the Government Code, now that all three task forces required by the commission's enabling Act have expired.

Ms. Susan Durso, General Counsel for the commission, has determined that for each year of the first five year period that the amended rule is in effect there will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of enforcing or administering the section. There will be a reduction in costs to the agency because there will be no expenditure of staff resources in support of the task force.

Ms. Durso has also determined that for the first five years the amended rule is in effect the public will benefit from a reduced expenditure of staff resources supporting this task force. There will be no effect on individuals, or large, small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Ms. Durso has also determined that for each year of the first five-year period the proposed rule is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, §2001.022.

Comments on the proposed amendments may be submitted to Susan K. Durso, General Counsel, Texas Residential Construction Commission, 311 E. 14th Street, Austin, Texas 78701 or by fax to (512) 475-2453. Comments may also be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Task Force Rule" in the subject line. Please include any comments on whether the initial reason for the rule still exists. The deadline for submission of comments is twenty (20) days from the date of publication of the proposed rules in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the rule under consideration.

The amendments are proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code, Property Code §436.004, which provides for the creation of a Arbitration Task Force, and which expires by operation of law on September 1, 2007; Government Code §2001.39, which requires state agency's to periodically review their rules, and Government Code Chapter 2110, regarding the establishment of agency advisory committees.

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

§300.5. Advisory Committees [~~Task Forces~~].

(a) The commission may establish advisory committees [~~task forces~~] in accordance with Government Code Chapter 2110. [~~and shall appoint at least one task force in accordance with Property Code §436.004 to be referred to as the Residential Arbitrators and Arbitration Task Force.~~]

(b) Composition. The commission shall appoint a reasonable number of advisory committee [~~task force~~] members to each advisory committee [~~task force~~] established not to exceed twenty-four members. The commission may appoint one or more commissioners to participate as a non-voting member of an advisory committee. [~~a task force.~~] The membership of an advisory committee [~~a task force~~] must reflect a balanced representation between the affected industry and consumers and include any express statutory membership representations as further described in this section. Each advisory committee [~~task force~~] appointed shall select a presiding officer from among its voting members.

(c) Duration.

[~~(1)~~] The commission shall establish the date for abolishing each advisory committee [~~task force~~] by rule.

[~~(2) The Residential Arbitrators and Arbitration Task Force shall be abolished on September 1, 2007, as prescribed by the Act.~~]

(d) Conditions of advisory committee [~~task force~~] membership.

(1) The term of office for each member shall be two years. A member whose term has expired shall continue to serve until a qualified replacement is appointed by the commission. In the event a member cannot complete his or her term, the commission shall appoint a qualified replacement to serve the remainder of the term.

(2) Participation in an advisory committee [~~a task force~~] is voluntary. Advisory committee [~~Task force~~] members shall serve without compensation. Travel reimbursement and per diem incurred in the performance of their official duties will be paid only if authorized by the Texas Legislature in the General Appropriations Act.

(e) Responsibilities.

[~~(1)~~] An advisory committee [~~A task force~~] will study issues and provide advice to the commission, as charged by the commission.

[~~(2) The Residential Arbitrators and Arbitration Task Force shall study and advise the commission regarding residential arbitrators and arbitration as statutorily required.~~]

(f) Meetings. Advisory committee [~~Task force~~] meetings may be conducted by telephone conference. Each advisory committee [~~task force~~] shall be subject to meeting at the call of the presiding member. A quorum shall consist of a majority of the advisory committee [~~task force~~] membership.

(g) Reports. The presiding member shall regularly prepare a report to the commission regarding its activities and recommendations.

(1) The presiding member shall file with the commission, a report containing:

(A) the minutes of meetings;

(B) a memo summarizing the meetings; and

(C) a list of its recommendations, if any.

(2) Within 20 days after a report is filed, any commissioner may request that one or more items described in the report be placed on an agenda to be discussed during an open meeting of the commission. If no commissioner requests that the list be placed on an agenda for an open meeting, the report is deemed accepted by the commission.

(h) Evaluation of costs and effectiveness. The commission shall evaluate each advisory committee [~~task force~~] annually. Evaluation shall be conducted by an evaluation team appointed by the Executive Director. The evaluation team will report to the commission in open meeting each August of its findings regarding:

(1) Each [~~each~~] advisory committee's [~~task force's~~] work;

(2) Each [~~each~~] advisory committee's [~~task force's~~] usefulness; and

(3) The [~~the~~] costs related to each advisory committee's [~~task force's~~] existence, including the cost of agency staff time spent in support of each advisory committee's [~~task force's~~] activities.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702439
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Proposed date of adoption: August 8, 2007
For further information, please call: (512) 463-2886

♦ ♦ ♦

10 TAC §300.6

The Texas Residential Construction Commission (commission) proposes new rule 10 TAC §300.6 regarding fees adopted by the commission. The proposed new section provides that the commission will adopt fees to implement Title 16 of the Property Code and will review those rules at least annually. The new rule is proposed as a part of a rule review pursuant to Texas Government Code, §2001.39. The new rule is proposed as a part of a plan to consolidate Chapters 300, 301, and 302 of Title 10, Part 7 of the Texas Administrative Code, because all three chapters currently contain rules related to general agency administration. Current rule 10 TAC §302.1 will be repealed as a part of the overall plan, and the proposed repeal is published in the same issue of the *Texas Register* as this proposed new rule. The proposed new rule includes current provisions of §302.1 and amendments based on changes to Title 16 adopted during the 80th Regular Session of the Legislature. The initial need for the rule continues to exist because the commission has statutory authority to collect certain fees and to impose late fees. In addition, the commission has new statutory language related to the adoption of those fees; and the rules will assist the public by providing a single cite for information regarding those rules and the agency's plan to review its fee rules at least annually.

Ms. Susan K. Durso, General Counsel for the commission, has determined that, for each year of the first five-year period that the new section is in effect, there will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of enforcing or administering the section.

Ms. Durso has also determined that, for the first five years the proposed new section is in effect, the public will benefit from having a rule summarizing general rules about the fees imposed and collected by the commission. There will be no effect on individuals or large, small, or micro businesses as a result of the new section because the proposed rule reflects the current practices of the commission.

Ms. Durso has also determined that, for each year of the first five-year period the proposed new section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, §2001.022.

Comments on the proposed new rules may be submitted to Susan K. Durso, General Counsel, Texas Residential Construction Commission, 311 E. 14th Street, Austin, Texas 78701 or by fax to (512) 475-2453. As part of the rule review, the public may include comments on whether the rule is still necessary. Comments may also be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Revised Fee Rule" in the subject line. The deadline for submission of comments is twenty (20) days from the date of publication of the proposed new rule in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the rule under consideration.

The new rule is proposed pursuant to Property Code, §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code, Chapters 416, 426, and 427 and Property Code, §408.002, regarding the adoption of fees by the commission; §408.005, regarding the collection of amounts due the commission; and §417.003 regarding fees for registration as an arbitrator. In addition, the new rule is proposed as part of an agency rule review plan pursuant to Government Code, §2001.39.

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

§300.6. Adoption of Fees.

(a) At least annually, the commission shall review and consider for adoption fees that are reasonable and necessary to provide sufficient revenue to cover the costs of administering the Act.

(b) The commission shall publish fees adopted on its website and make the information available to the public upon request.

(c) The fees collected for application and renewal of builder or remodeler registration certificates will be no greater than the maximum amount set by statute.

(d) The commission may adopt late fees for late payment of any fee due to the commission; however, the amount of the late fee shall not exceed the amount of the fee due.

(e) The commission may charge a requestor a reasonable fee for the submission of a request under Subtitle D of Title 16 of the Property Code as required by the commission to cover the expense of the third-party inspector, and the commission shall provide a waiver or reduction of a fee for a homeowner who submits a request and demonstrates an inability to pay the required fee.

(f) The commission may seek reimbursement of any amounts due to the commission and shall seek restitution for any dishonored payment instrument submitted to the commission for payment of any amount due to the commission.

(g) All fees paid to the commission for registration, certification or renewal of a registration or certification issued by the commission are non-refundable.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702440
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Proposed date of adoption: August 8, 2007
For further information, please call: (512) 463-2886

♦ ♦ ♦

10 TAC §300.7

The Texas Residential Construction Commission (commission) proposes new 10 TAC §300.7 regarding Fees for Public Information. The proposed new section will provide that the commission will charge fees for providing responses to requests for information pursuant to the Public Information Act in accordance with applicable law. The new section refers to the rules adopted by the Office of the Attorney General found in Title 1 of the Texas Administrative Code in §§70.1 - 70.11. The Attorney General's new rules became effective February 22, 2007.

In addition the new section will include changes to the commission's enabling Act exempting from charges agency information provided in response to a request under Property Code §409.001. The new section is proposed as a part of a rule review plan undertaken by the commission pursuant to Government Code §2001.39, which requires state agencies to periodically review adopted rules to determine if the initial reason for the rule still exists. Chapter 552 of the Government Code governs the charges for responding to requests for public information and assigns by rule the task of setting those fees to the Office of the Attorney General. The agency's rule plan moves the current agency fee rule for public information from 10 TAC §302.2 to 10 TAC §300.7 as part of an overall scheme to consolidate agency administrative rules into one chapter. The commission believes that the initial reason for adopting a rule regarding charges for responding to requests for public information continues to exist.

Ms. Susan Durso, General Counsel for the commission, has determined that for each year of the first five year period that the new section is in effect there will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of enforcing or administering the section.

Ms. Durso has also determined that for the first five years the new section is in effect the public will benefit from knowing the correct references to the rules governing charges under the Public Information Act. There will be no effect on individuals, or large, small or micro businesses.

Ms. Durso has also determined that for each year of the first five-year period the new section is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, §2001.022.

Comments on the proposed new section may be submitted to Susan K. Durso, General Counsel, Texas Residential Construction Commission, 311 E. 14th Street, Austin, Texas 78701 or by fax to (512) 475-2453. Please include any comments on whether the initial need for the rule continues to exist. Comments may also be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Public Information Fee Rule" in the subject line. The deadline for submission of comments is twenty (20) days from the date of publication of the proposed rules in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the rule under consideration.

The new rule is proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code and §408.002, regarding charges for certain information provided by the commission under §409.001; Texas Government Code, Chapter 552 (Public Information) Subchapter F (Charges for Providing Copies of Public Information) and Government Code §2001.39, which requires that agencies periodically review their rules.

No other statute, article, or code was affected by this section.

§300.7. Fees for Public Information.

(a) The commission's fees for providing public information will be determined in accordance with the rules promulgated by the Office of the Attorney General under Title 1, Texas Administrative Code, §§70.1 - 70.11 (Cost of Public Information).

(b) Information describing commission functions, the limited statutory warranty and building and performance standards, the state-sponsored inspection and dispute resolution process, and complaint and request filing procedures provided pursuant to a request under §409.001 of the Property Code is not subject to fees charged pursuant to subsection (a) of this section, unless the request is made by a builder or remodeler for an agency publication to be distributed by that builder or remodeler.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702464
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Proposed date of adoption: August 8, 2007
For further information, please call: (512) 463-2886

♦ ♦ ♦

CHAPTER 301. GENERAL PROVISIONS

10 TAC §301.1

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

The Texas Residential Construction Commission ("commission") proposes to repeal 10 TAC §301.1, concerning definitions used in construing agency rules promulgated to implement the Texas Residential Construction Commission Act ("Act"), Title 16, Property Code. The repeal is proposed pursuant to an overall scheme to consolidate agency administrative rules into a single chapter under the agency's rule review plan. The agency is currently reviewing its rules pursuant to the requirements of Government Code §2001.39. The definitions currently contained in 10 TAC §301.1 will be proposed for adoption with any necessary amendments to the text resulting from recent legislation, prior to the effective date of the repeal.

Ms. Susan K. Durso, General Counsel for the commission, has determined that for each year of the first five year period that the proposed repeal is in effect there will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of enforcing or administering the section.

Ms. Durso has also determined that for the first five years the proposed repeal is in effect the public will benefit from the overall rule reorganization that will place all of the agency administrative rules in the same chapter. There will not be an effect on individuals, large, small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

Ms. Durso has also determined that for each year of the first five-year period the proposed repeal is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, §2001.022.

Comments on the proposed repeal may be submitted to Susan K. Durso, General Counsel, Texas Residential Construction Commission, 311 E. 14th Street, Austin, Texas 78701 or by fax to (512) 475-2453. Comments may also be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "301.1 repeal" in the subject line. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed rules in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the section under consideration. Comments not timely received or that are submitted electronically but do not have "301.1 repeal" in the subject line may not be considered.

The repeal is proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code and Government Code §2001.30, which requires state agencies to periodically review their rules to determine whether there is a continued need for their existence. No other statute, article, or code is affected by this section.

§301.1. Definitions.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702476
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Proposed date of adoption: August 8, 2007
For further information, please call: (512) 463-2886

♦ ♦ ♦

CHAPTER 302. FEES

10 TAC §302.1

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

The Texas Residential Construction Commission (commission) proposes to repeal 10 Texas Administrative Code §302.1 (10 TAC §302.1) regarding fees adopted by the commission. The proposed repeal is part of an overall plan to consolidate rules found in 10 Texas Administration Code Chapters 300, 301, and 302 as a part of an agency rule review undertaken pursuant to Texas Government Code §2001.39. In this same issue of the *Texas Register*, a new rule is proposed that will incorporate the current language of §302.1 with amendments to the rule language as a result of legislative changes to the commission's enabling Act passed during the 80th Regular Session of the Texas Legislature.

Ms. Susan Durso, General Counsel for the commission, has determined that for each year of the first five year period that the repeal is in effect there will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of enforcing or administering the section.

Ms. Durso has also determined that for the first five years the repeal is in effect the public will benefit from having all rules related to agency administration consolidated into a single chapter of the Administrative Code. There will be no effect on individuals, or large, small or micro businesses as a result of the repeal because the rule language is being moved to another administrative rule chapter and the legislative changes reflect the current practices of the commission.

Ms. Durso has also determined that for each year of the first five-year period the repeal is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, §2001.022.

Comments on the proposed repeal may be submitted to Susan K. Durso, General Counsel, Texas Residential Construction Commission, 311 E. 14th Street, Austin, Texas 78701 or by fax to (512) 475-2453. Comments should include any comments on the agency rule review plan to consolidate agency administrative rules into a single chapter of the Texas Administrative Code and to determine whether this rule is still needed. Comments may also be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Fee Rule Repeal" in the subject line. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed repeal in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the rule under consideration.

The repeal is proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 and Government Code §2001.39, requiring periodic agency review of rules.

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

§302.1. Adoption of Fees.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702441
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Proposed date of adoption: August 8, 2007
For further information, please call: (512) 463-2886

♦ ♦ ♦

10 TAC §302.2

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

The Texas Residential Construction Commission (commission) proposes to repeal 10 Texas Administrative Code §302.2 (10 TAC §302.2) regarding fees charged for public information. The proposed repeal is part of an overall plan to consolidate rules found in 10 Texas Administration Code Chapters 300, 301, and

302 as a part of an agency rule review undertaken pursuant to Texas Government Code §2001.39. In this same issue of the *Texas Register*, a new rule is proposed that will incorporate the current language of §302.2 with amendments to the rule language as a result of legislative changes to the authority of the Texas Building and Procurement Commission and the Office of the Attorney General passed during the 79th Regular Session of the Texas Legislature and commission's enabling Act passed during the 80th Regular Session of the Texas Legislature.

Ms. Susan Durso, General Counsel for the commission, has determined that for each year of the first five year period that the repeal is in effect there will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of enforcing or administering the section.

Ms. Durso has also determined that for the first five years the repeal is in effect the public will benefit from having all rules related to agency administration consolidated into a single chapter of the Administrative Code. There will be no effect on individuals, or large, small or micro businesses as a result of the repeal because the rule language is being moved to another administrative rule chapter and the legislative changes reflect the current practices of the commission and the new duties of the Office of the Attorney General.

Ms. Durso has also determined that for each year of the first five-year period the repeal is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, §2001.022.

Comments on the proposed repeal may be submitted to Susan K. Durso, General Counsel, Texas Residential Construction Commission, 311 E. 14th Street, Austin, Texas 78701 or by fax to (512) 475-2453. Comments should include any comments on the agency rule review plan to consolidate agency administrative rules into a single chapter of the Texas Administrative Code and to determine whether this rule is still needed. Comments may also be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Public Information Fee Rule Repeal" in the subject line. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed repeal in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the rule under consideration.

The repeal is proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16; Government Code Chapter 552, which determines the fees that at agency can charge for responding to requests for public information and Government Code §2001.39, requiring periodic agency review of rules.

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

§302.2. Fees for Public Information.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702443

Susan K. Durso
General Counsel
Texas Residential Construction Commission
Proposed date of adoption: August 8, 2007
For further information, please call: (512) 463-2886

♦ ♦ ♦

TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 1. LIBRARY DEVELOPMENT

SUBCHAPTER A. LIBRARY SERVICES AND TECHNOLOGY ACT STATE PLAN

13 TAC §1.21, §1.22

The Texas State Library and Archives Commission proposes amendments to 13 TAC §1.21 and §1.22, regarding the state plan for federal funds.

The proposed amendments bring the rules into alignment with the requirements of the program's federal funding source by updating the wording in the rule.

Deborah Littrell, Library Development Division Director, has determined that for the first five years the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Littrell also has determined that for each of the first five years the proposed amendments are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be to strengthen local libraries. There are no cost implications to either small businesses or persons required to comply with the proposed amendments.

Written comments on this proposal may be submitted to Christopher Jowaisas, Library Development Division, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711-2927, or fax (512) 463-8800.

The amendments are proposed under the authority of Government Code §441.006 that permits the commission to accept, receive, and administer federal funds; and §441.009 that permits the commission to adopt a state plan for improving library services.

The proposed amendments affect the Government Code §441.006 and §441.009.

§1.21. State Plan for the Library Services and Technology Act in Texas.

The Texas State Library and Archives Commission adopts by reference the State Plan for the Library Services and Technology Act in Texas FFY 2008-2012 [~~1998-2002~~]. Copies may be obtained from www.tsl.state.tx.us/ld/pubs/lstaplan/index.html [~~the Library Development Division of the Texas State Library, P.O. Box 12927, Austin, Texas 78711~~].

§1.22. Circulation.

(a) These plans shall be circulated under OMB Circular A-95 for review and comment.

(b) The rules being adopted by reference have been circulated under OMB Circular A-95 for review and comment.

(c) The State Plan for the Library Services and Technology Act in Texas establishes the mission, needs, and goals that will be addressed, and the programs that will be conducted, during the five-year period.

~~[(c) The LSCA Annual Program and Long-Range Plan establish general criteria used in making application for grants, determining recipients for grants, and following up on the utilization of grants.]~~

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702467
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 463-5459

♦ ♦ ♦

SUBCHAPTER C. MINIMUM STANDARDS FOR ACCREDITATION OF LIBRARIES IN THE STATE LIBRARY SYSTEM

13 TAC §1.78

(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 State Library and Archives Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Library and Archives Commission proposes to repeal 13 TAC §1.78, regarding the county librarian's certificate.

Senate Bill 913 has repealed Government Code §441.007 which provided the commission the statutory authority to certify county librarians. The proposed repeal of this rule will revise the rules accordingly.

Deborah Littrell, Library Development Division Director, has determined that for the first five years the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Littrell also has determined that for each of the first five years the repeal is in effect the public benefits anticipated as a result of enforcing the repeal will be to comply with state law. There are no cost implications to either small businesses or persons required to comply with the proposed repeal.

Written comments on this proposal may be submitted to Christopher Jowaisas, Library Development Division, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711-2927, or fax (512) 463-8800.

The repeal is proposed under the authority of Senate Bill 913 (80th Legislature, Regular Session) that repeals the authority of the commission to certify county librarians.

The proposed repeal affects the Government Code §441.007.

§1.78. County Librarian's Certificate.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702471
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 463-5459

♦ ♦ ♦

13 TAC §§1.81, 1.83, 1.84

The Texas State Library and Archives Commission proposes amendments to 13 TAC §§1.81, 1.83, and 1.84, regarding the minimum standards for accreditation of libraries in the state library system and professional librarians.

The proposed amendments to §1.81 and §1.83 remove outdated sections of the rules, standardize the language and clarify the intent. The proposed amendment to §1.84 is necessary to continue special treatment to certain librarians who were granted special consideration under 13 TAC §5.5, which is being repealed by Senate Bill 913 that repeals the authority of the commission to certify county librarians.

Deborah Littrell, Library Development Division Director, has determined that for the first five years the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Ms. Littrell also has determined that for each of the first five years the amendments are in effect the public benefits anticipated as a result of enforcing the amendments will be to not penalize individuals who were "grandfathered" certain county librarian certification status. There are no cost implications to either small businesses or persons required to comply with the proposed amendments.

Written comments on this proposal may be submitted to Christopher Jowaisas, Library Development Division, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711-2927, or fax (512) 463-8800.

The amendments are proposed under the authority of Senate Bill 913 (80th Legislature, Regular Session) that repeals the authority of the commission to certify county librarians; §441.123 that directs the commission to establish and develop a state library system; and §441.136 that authorizes the director and librarian to propose rules necessary for the administration of the program.

The proposed amendments affect Government Code §§441.007, 441.123, and 441.136.

§1.81. Quantitative Standards for Accreditation of Library.

(a) The definition of "local fiscal year" is the fiscal year in which January 1 of that year falls.

~~[(b) The minimum requirements for membership in the state library system in local fiscal years 2004, 2005, and 2006:]~~

~~[(1) A library serving a population of at least 200,001 persons must:]~~

~~[(A) have local expenditures amounting to at least $2.80 per capita;]~~

[(B) have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials;]

[(C) be open for service not less than 64 hours per week; and]

[(D) have six professional full-time librarians, with one additional professional full-time librarian for every 50,000 persons above 200,000; an additional professional full-time librarian must be assigned full time to system duties if the library is a major resource center. See §1.47 of this title (relating to Consulting and Continuing Education Services) for definition of a professional librarian.]

[(2) A library serving a population of 100,001 - 200,000 persons must:]

[(A) have local expenditures amounting to at least $2.40 per capita;]

[(B) have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials;]

[(C) be open for service not less than 54 hours per week; and]

[(D) have four professional full-time librarians, with one additional professional full-time librarian for each 50,000 persons above 100,000; an additional professional librarian must be assigned full time to system duties if the library is a major resource center.]

[(3) A library serving a population of 50,001 - 100,000 persons must:]

[(A) have local expenditures amounting to at least $2.20 per capita;]

[(B) have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials;]

[(C) be open for service not less than 48 hours per week; and]

[(D) have at least two professional full-time librarians.]

[(4) A library serving a population of 25,001 - 50,000 persons must:]

[(A) have local expenditures of at least $1.80 per capita;]

[(B) have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials;]

[(C) be open for service not less than 40 hours per week; and]

[(D) have at least one professional full-time librarian.]

[(5) A library serving a population of 10,001 - 25,000 persons must:]

[(A) have local expenditures of at least $1.50 per capita;]

[(B) have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials, provided that in either case a minimum of 7,500 items are held;]

[(C) be open for service not less than 30 hours per week; and]

[(D) have a head librarian who is employed in library duties at least 30 hours per week.]

[(6) A library serving a population of 10,000 or fewer persons must:]

[(A) have local expenditures of $1.20 per capita or $5,000, whichever is greater;]

[(B) have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials, provided that in either case a minimum of 7,500 items are held;]

[(C) be open for service not less than 20 hours per week; and]

[(D) have a head librarian who is employed in library duties at least 20 hours per week.]

(b) [(c)] The following are [After local fiscal year 2006,] the minimum requirements for membership in the state library system:

(1) A library serving a population of at least 500,001 persons must:

(A) have local expenditures amounting to at least $13.00 per capita in local fiscal years 2007, 2008, 2009; $13.40 per capita in local fiscal years 2010, 2011, 2012; $13.82 per capita in local fiscal years 2013, 2014, 2015.

(B) have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials;

(C) be open for service not less than 64 hours per week; [and]

(D) employ a library director for at least 40 hours per week in library duties; and

(E) [(D)] employ [have] twelve full-time professional [full-time] librarians, with one additional full-time professional [full-time] librarian for every 50,000 persons above 500,000; an additional professional [full-time] librarian must be assigned full time to coordinate and manage system duties if the library is a major resource center. [See §1.47 of this title for definition of a professional librarian.]

(2) A library serving a population of 200,001 - 500,000 persons must:

(A) have local expenditures amounting to at least $11.25 per capita in local fiscal years 2007, 2008, 2009; $11.60 per capita in local fiscal years 2010, 2011, 2012; $11.95 per capita in local fiscal years 2013, 2014, 2015;

(B) have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials;

(C) be open for service not less than 64 hours per week; [and]

(D) employ a library director for at least 40 hours per week in library duties; and

(E) [(D)] employ [have] six full-time professional [full-time] librarians, with one additional full-time professional [full-time] librarian for every 50,000 persons above 200,000; an additional professional [full-time] librarian must be assigned full time to coordinate and manage system duties if the library is a major resource center. [See §1.47 of this title (relating to Consulting and Continuing Education Services) for definition of a professional librarian.]

(3) A library serving a population of 100,001 - 200,000 persons must:

(A) have local expenditures amounting to at least $9.00 per capita in local fiscal years 2007, 2008, 2009; $9.30 per capita in local fiscal years 2010, 2011, 2012; $9.60 per capita in local fiscal years 2013, 2014, 2015;

(B) have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials;

(C) be open for service not less than 54 hours per week; [~~and~~]

(D) employ a library director for at least 40 hours per week in library duties; and

(E) [~~(D)~~] employ [~~have~~] four full-time professional [~~full-time~~] librarians, with one additional full-time professional [~~full-time~~] librarian for each 50,000 persons above 100,000; an additional professional librarian must be assigned full time to coordinate and manage system duties if the library is a major resource center.

(4) A library serving a population of 50,001 - 100,000 persons must:

(A) have local expenditures amounting to at least $7.50 per capita in local fiscal years 2007, 2008, 2009; $7.75 per capita in local fiscal years 2010, 2011, 2012; $8.00 per capita in local fiscal years 2013, 2014, 2015;

(B) have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials;

(C) be open for service not less than 48 hours per week; [~~and~~]

(D) employ a library director for at least 40 hours per week in library duties; and

(E) [~~(D)~~] employ [~~have~~] at least two full-time professional [~~full-time~~] librarians.

(5) A library serving a population of 25,001 - 50,000 persons must:

(A) have local expenditures of at least $5.00 per capita in local fiscal years 2007, 2008, 2009; $5.15 in local fiscal years 2010, 2011, 2012; $5.31 per capita in local fiscal years 2013, 2014, 2015;

(B) have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials;

(C) be open for service not less than 40 hours per week; [~~and~~]

(D) employ a library director for at least 40 hours per week in library duties; and

(E) [~~(D)~~] employ [~~have~~] at least one full-time professional [~~full-time~~] librarian.

(6) A library serving a population of 10,001 - 25,000 persons must:

(A) have local expenditures of at least $4.00 per capita in local fiscal years 2007, 2008, 2009; $4.12 per capita in local fiscal years 2010, 2011, 2012; $4.25 per capita in local fiscal years 2013, 2014, 2015;

(B) have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials, provided that in either case a minimum of 7,500 items are held;

(C) be open for service not less than 30 hours per week; and

(D) employ a library director for at least 30 hours per week in library duties.

[~~(D) have a head librarian who is employed in library duties at least 30 hours per week.~~]

(7) A library serving a population of 5,001 - 10,000 must:

(A) have local expenditures of at least $3.75 per capita in local fiscal years 2007, 2008, 2009; $3.85 per capita in local fiscal years 2010, 2011, 2012; $3.97 per capita in local fiscal years 2013, 2014, 2015;

(B) have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials; provided that in either case a minimum of 7,500 items are held.

(C) be open for service not less than 20 hours per week; and

(D) employ a library director for at least 20 hours per week in library duties.

[~~(D) have a head librarian who is employed in library duties at least 20 hours per week.~~]

(8) A library serving a population of 5,000 or fewer persons must:

(A) have local per capita expenditures or minimum total local expenditures, whichever is greater, of $3.50 per capita or $10,000 total in local fiscal years 2007, 2008, 2009; $3.60 per capita or $10,300 total in local fiscal years 2010, 2011, 2012; $3.70 per capita or $10,650 in local fiscal years 2013, 2014, 2015;

(B) have at least one item of library materials per capita or expend at least 25% of the local expenditures on the purchase of library materials, provided that in either case a minimum of 7,500 items are held;

(C) be open for service not less than 20 hours per week; and

(D) employ a library director for at least 20 hours per week in library duties.

[~~(D) have a head librarian who is employed in library duties at least 20 hours per week.~~]

§1.83. Other Requirements.

Each public library applying for membership in the Texas Library System must meet the following requirements:

(1) The [~~By local fiscal year 2004, a~~] library must have a telephone with a listed number.

(2) The [~~By local fiscal year 2005, a~~] library must have available both a photocopier and a computer with Internet access for use by the library staff and the general public.

(3) The library must [~~By local fiscal year 2005, a public library shall~~] offer to borrow materials via the interlibrary loan resource sharing service for persons residing in the library's designated service area. A library must [~~shall~~] also participate in the interlibrary loan resource sharing service by lending its materials to other libraries, as

requested. The library governing board may adopt policies regarding materials available for loan and the length of the loan, the good standing of the borrower, and other relevant issues; these policies must be posted on the library system's web site.

(4) The library director must [~~By local fiscal year 2005, a public library director shall~~] have a minimum of ten hours of continuing education credits annually. Continuing education activities must be instructional and may include workshops, appropriate sessions at library association conferences, and distance education courses. Library system meetings, board meetings, public hearings, other business meetings, author luncheons, and other non-instructional sessions are not considered continuing education activities. The director must maintain appropriate documentation of participation, duration, and relevance to the operation of a library. [~~These continuing education hours must meet the qualitative requirements of §5.4 of this title (relating to Term).~~]

(5) The library must [~~By local fiscal year 2006, a public library shall~~] have a catalog of its holdings available to the public that is searchable, either manually or electronically, at a minimum by author, title, and subject.

(6) The library must [~~By local fiscal year 2006, a public library shall~~] have a long-range plan that is approved by its governing board. This plan must be reviewed and updated at least every five years and must include a collection development element. Library systems must [~~shall~~] provide public libraries with the consulting and continuing education services necessary to develop these plans as part of the services provided under §1.47 of this title (relating to Consulting and Continuing Education Services).

§1.84. Professional Librarian.

(a) A professional librarian is defined as a person holding either a fifth year degree in librarianship from a program accredited by the American Library Association or a master's degree in library or information science from a program accredited by the American Library Association or a higher credential from a library school offering an American Library Association-approved program in library or information science. Upon the written request of persons holding degrees in library or information science from schools outside the United States or Canada, the state librarian may certify them as professional librarians if their program of study is deemed comparable to that of a library school accredited by the American Library Association.

(b) Individuals who were issued a Grade I - Special County Librarians Certificate may be designated a professional librarian for the purposes of §1.81 of this subchapter (relating to Quantitative Standards for Accreditation of Library). This designation is valid only for the library where the person was employed on June 15, 2007. The individual must still comply with the annual requirements of §1.83(4) of this subchapter (relating to Other Requirements). Grade I - Special County Librarians Certificate were previously issued under the terms of a now-repealed rule (§5.5 of this title, relating to Special Provisions for Certifying County Librarians).

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702472

Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 463-5459

♦ ♦ ♦

CHAPTER 5. COUNTY LIBRARIAN CERTIFICATION

13 TAC §§5.1 - 5.5, 5.7 - 5.9

(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 State Library and Archives Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Library and Archives Commission proposes to repeal 13 TAC §§5.1 - 5.5 and §§5.7 - 5.9, regarding the county librarian certification.

Senate Bill 913 has repealed Government Code §441.007 which provided the commission the statutory authority to certify county librarians. The proposed repeal will revise the rules accordingly.

Deborah Littrell, Library Development Division Director, has determined that for the first five years the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Ms. Littrell also has determined that for each of the first five years the repeals are in effect the public benefits anticipated as a result of enforcing the repeals will be to comply with state law. There are no cost implications to either small businesses or persons required to comply with the proposed repeals.

Written comments on this proposal may be submitted to Christopher Jowaisas, Library Development Division, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711-2927, or fax (512) 463-8800.

The repeals are proposed under the authority of Senate Bill 913 (80th Legislature, Regular Session) that repeals the authority of the commission to certify county librarians.

The proposed repeals affect the Government Code §441.007.

§5.1. Grade I Certificate (Permanent).
§5.2. Grade II Certificate.
§5.3. Grade III Certificate.
§5.4. Term.
§5.5. Special Provisions.
§5.7. Certification of Persons from Other States.
§5.8. Complaints Against County Librarians.
§5.9. Administrative Hearing.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702468
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 463-5459

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 7. STATE COMMITTEE OF EXAMINERS IN THE FITTING AND DISPENSING OF HEARING INSTRUMENTS

CHAPTER 141. FITTING AND DISPENSING OF HEARING INSTRUMENTS

22 TAC §141.16

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee) proposes an amendment to §141.16, concerning the licensing and regulation of fitters and dispensers of hearing instruments.

BACKGROUND AND PURPOSE

Amendments to §141.16(g) and (h) relate to audiometric testing standards for hearing instrument fitters and dispensers. The amendments are proposed to ensure that the rule correctly reflects the provisions of Texas Occupations Code, §402.353, related to the requirement that audiometric testing be conducted in compliance with national standards as established by the American National Standards Institute (ANSI) "ears covered" octave band criteria for Permissible Ambient Noise Levels During Audiometric Testing.

SUMMARY

Amendments to §141.16(g) update the rule, reorganize existing language for clarity, and ensure that the rule references the most current national standards for audiometric testing as required by the statute.

An amendment to §141.16(h) removes an obsolete chart containing maximum permissible ambient noise levels as previously established by the American National Standards Institute.

FISCAL NOTE

Joyce Parsons, Executive Director, has determined that for each fiscal year of the first five years the section is in effect, there will be no fiscal implications to the state as a result of enforcing or administering the section as proposed. Implementation of the proposed section will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Parsons has also determined that there will be no economic costs to small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section. There is no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Ms. Parsons has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing and administering the section is to effectively regulate the practice of fitting and dispensing of hearing instruments in Texas, which will protect and promote public health, safety, and welfare.

REGULATORY ANALYSIS

The committee 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.

TAKINGS IMPACT ASSESSMENT

The committee has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Joyce Parsons, Executive Director, State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756 or by email to fdhi@dshs.state.tx.us. When e-mailing comments, please indicate "Comments on Proposed Rules" in the e-mail subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

The proposed amendment is authorized by the Texas Occupations Code, §402.102, which authorizes the committee to adopt rules necessary for the performance of the committee's duties.

The proposed amendment affects the Texas Occupations Code, Chapter 402.

§141.16. Conditions of Sale.

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

(g) Audiometric testing not conducted in a stationary acoustical enclosure.

(1) A notation shall be made on the hearing test if testing was not done in a stationary acoustical enclosure and sound-level measurements must be conducted at the time of the testing to ensure that ambient noise levels meet permissible standards for testing threshold to 20 dB based on the most current American National Standards Institute "ear covered" octave band criteria for Permissible Ambient Noise Levels During Audiometric Testing, or the test environment shall have a maximum allowable ambient noise level of 42 dBA.

(2) (No change.)

~~[(3) If audiometric testing is not conducted in a stationary acoustical enclosure, the test environment shall have a maximum allowable ambient noise level of 42 dBA.]~~

(h) Audiometric testing conducted in a stationary acoustical enclosure.

(1) (No change.)

(2) A stationary acoustical enclosure includes, but is not limited to, an audiometric test room.

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

~~[(C) The primary and necessary requirement of an audiometric test room is to ensure that the maximum permissible ambient noise levels established by the American National Standards Institute do not exceed the levels for audiometric test room for ears covered 250 - 8000 Hz. The levels are as follows:]~~
~~[Figure: 22 TAC §141.16(h)(2)(C)]~~

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702438
Ronald Ensweiler
Chair
State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

PART 9. TEXAS MEDICAL BOARD

CHAPTER 161. GENERAL PROVISIONS

22 TAC §161.3

The Texas Medical Board proposes an amendment to §161.3, concerning Organization and Structure.

The amendment proposes standards of conduct for Board members, including prohibiting expert testimony by board members in cases in which a licensee is a party and in which the expert testimony relates to the standard of care or medical malpractice.

Elsewhere in this issue of the *Texas Register,* the Texas Medical Board contemporaneously withdraws the amendment to §161.3, which was previously published in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2438).

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the amendment 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 section as proposed.

Mr. Simpson also has determined that for each year of the first five years the amendment as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to set forth a standard that Board members should follow in their conduct as a Board member. 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.

Section 152.006, Texas Occupations Code Annotated is affected by the proposed amendment.

§161.3. Organization and Structure.

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

(e) A board member should strive to achieve and project the highest standards of professional conduct. Such standards include:

(1) A board member should not accept or solicit any benefit that might influence the board member in the discharge of official duties or that the board member knows or should know is being offered with the intent to influence official conduct.

(2) A board member should not accept employment or engage in any business or professional activity that would involve the disclosure of confidential information acquired by reason of the official position as a board member.

(3) A board member should not accept employment that could impair independence of judgment in the performance of the board member's official duties.

(4) A board member should not make personal investments that could reasonably be expected to create a conflict between the board member's private interest and the public interest.

(5) A board member should not intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the board member's official powers or performed the board member's official duties in favor of another.

(6) A board member should be fair and impartial in the conduct of the business of the board. A board member should project such fairness and impartiality in any meeting or hearing.

(7) A board member should be diligent in preparing for meetings and hearings.

(8) A board member should avoid conflicts of interests. If a conflict of interest should unintentionally occur, the board member should recuse himself or herself from participating in any matter before the board that could be affected by the conflict.

(9) A board member should avoid the use the board member's official position to imply professional superiority or competence.

(10) A board member should avoid the use of the board member's official position as an endorsement in any health care related matter.

(11) A board member should not appear as an expert witness in any case in which a licensee of the board is a party and in which the expert testimony relates to standard of care or professional malpractice. A board member may provide expert testimony if the board member has been called primarily as a fact witness. A board member should disclose any potential employment as an expert witness to and seek prior approval of the board's executive committee. When providing expert testimony in any matter, a board member should state that any opinion of the board member is not on behalf of or approved by the board and should not claim special expertise because of board membership.

(12) A board member should refrain from making any statement that implies that the board member is speaking for the board if the board has not voted on an issue or unless the board has given the board member such authority.

(f) [~~(e)~~] One ground for removal from the board occurs if a board member is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board. If the executive director of the board has knowledge that a potential ground for removal exists due to a member's failure to attend an adequate number of regularly scheduled board meetings, the executive director shall notify the president of the board of the ground. The president of the board shall then notify the governor's office that a potential ground for removal exists. A board member shall be considered to have been absent from a regularly scheduled board meeting if the member fails to attend at least a portion of either a full board session or a portion of a regularly scheduled committee meeting to which a member is assigned during such board meeting. Any dispute or controversy as to whether or not an absence has occurred shall be submitted to the full board for resolution by a majority vote after giving the purported absentee the opportunity to present information concerning the alleged absences and after allowing discussion by other members of the board.

(g) [~~(f)~~] Each member of the board shall receive per diem as provided by law for each day that the member engages in the business of the board and will be reimbursed for travel expenses incurred in accordance with the state of Texas and board's travel policies.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702431
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 176. HEALTH CARE LIABILITY LAWSUITS AND SETTLEMENTS

22 TAC §§176.1, 176.2, 176.4, 176.6, 176.8, 176.9

The Texas Medical Board proposes amendments to §§176.1, 176.2, 176.4, 176.6, 176.8 and 176.9, concerning Health Care Liability Lawsuits and Settlements.

The amendments provide statutory references to Chapter 74 of the Texas Civil Practices and Remedies Code and Chapters 82 and 1901 of the Insurance Code, and updates the name of the Texas Medical Board.

Elsewhere in this issue of the *Texas Register,* the Texas Medical Board contemporaneously proposes the review of Chapter 176.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the amendments 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 sections as proposed.

Mr. Simpson also has determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be general cleanup of the chapter. 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 and §160.052, 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.

§176.1. Definitions.
For the purposes of this chapter:

(1) "Health care liability claim" means a cause of action against a licensee for treatment, lack of treatment, or other claimed departure from accepted standards of medical or health care or safety that proximately results in injury to or death of a patient, whether the patient's claim or cause of action sounds in tort or contract. This definition is consistent with Texas Civil Practices and Remedies Code §74.001(a)(13) (relating to medical liability).

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

§176.2. Reporting Responsibilities,

(a) The reporting form set out in §176.9 of this chapter must be completed and forwarded to the Texas Medical Board [~~State Board of Medical Examiners~~] for each defendant licensee against whom a health care liability complaint has been filed or a settlement has been made.

(1) (No change.)

(2) A licensee is ultimately responsible for assuring that this information is reported to the board, as required by TEX. OCC. CODE §160.052(b). The licensee shall report the required information if:

(A) the licensee does not carry professional [~~health care~~] liability insurance as described in Chapter 1901 of the Texas Insurance Code;

(B) is not covered by professional [~~health care~~] liability insurance;

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

(3) (No change.)

(b) (No change.)

§176.4. Timeframes and Attachments.

(a) Part I of the form, reporting the filing of a lawsuit, shall be filed not later than the 30th day after receipt of a complaint filed in a lawsuit against the licensee. A copy of the complaint and any expert report filed under Texas Civil Practices and Remedies Code Section 74.351 [~~13.01, Medical Liability and Insurance Improvement Act of Texas~~], must be attached. If the expert report is not filed with the Court at the time the lawsuit is filed, the expert report shall be filed with the board, together with an updated Part I of the form, not later than the 30th day after receipt of the expert report.

(b) (No change.)

§176.6. Penalty.
Failure by a licensed insurer to report under this chapter shall be referred to the Texas Department of Insurance. Sanctions under Chapter 82 of the Texas Insurance Code, [~~Article 1.10, section 7,~~] may be imposed for failure to report.

§176.8. Board Review of Health Care Liability Lawsuits and Settlements.

(a) In accordance with Section 164.201 of the Act, the board shall review the medical competency of a licensee against whom three or more expert reports under Texas Civil Practices and Remedies Code Section 74.351 [~~Section 13.01, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes)~~], have been filed in three separate lawsuits within a five-year period in the same manner as if a complaint against the licensee had been made to the board under Section 154.051.

(b) (No change.)

§176.9. Reporting Form.

The reporting form shall be as follows.
Figure: 22 TAC §176.9

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702433
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 181. CONTACT LENS PRESCRIPTIONS

22 TAC §§181.2, 181.3, 181.6

The Texas Medical Board proposes amendments to §§181.2, 181.3 and 181.6, concerning Contact Lens Prescriptions.

The amendments establish that the verification of a contact lens prescription may substitute for an original signature to create a valid contact lens prescription.

Elsewhere in this issue of the *Texas Register,* the Texas Medical Board contemporaneously proposes the review of Chapter 181.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the amendments 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 sections as proposed.

Mr. Simpson also has determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to carry out the Legislative requirement for the Board to adopt rules consistent with Chapter 353 of the Occupations Code related to contact lens prescriptions. 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.

Texas Occupations Code Annotated, §353.152 and §353.1015 are affected by this proposal.

§181.2. Definitions.

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

(1) Contact lens prescription--a written prescription that contains the following information:

(A) - (D) (No change.)

(E) the [~~original~~] signature of the physician or a verification of the prescription as described by Tex. Occ. Code Section 353.1015;

(F) - (J) (No change.)

(2) (No change.)

§181.3. Release of Contact Lens Prescription.

(a) Except as provided in subsection (d) of this section, each physician who performs an eye examination and fits a patient for contact lenses shall, on request, prepare and give a contact lens prescription to the patient, and as directed by any person designated to act on behalf of the patient, provide the prescription or verify the prescription as provided by Tex. Occ. Code Section 353.1015. The physician may exclude categories of contact lenses if the exclusion is clinically indicated. The physician may not charge the patient a fee for providing the contact lens prescription but may charge a fee for examination and a fee for fitting of contact lenses as a condition for giving a contact lens prescription to the patient.

(b) - (e) (No change.)

(f) A physician may not condition the availability to a patient of an eye examination, a fitting for contact lenses, the issuance or verification of a contact lens prescription, or any combination of these services on a requirement that the patient agree to purchase contact lenses or other ophthalmic goods from the physician.

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

§181.6. Physician's Prescriptions: Delegation.

(a) These rules shall not be interpreted to prevent, [~~limit,~~] or restrict a physician from treating or prescribing for the physician's patients or from directing or instructing others under the physician's control, supervision or instruction who assists those patients according to specific directions, orders, instructions, or prescriptions.

(b) If a physician's directions, instructions, orders, or prescriptions are to be performed or filled by an optician who is independent of the physician's office, the directions, instructions, orders or prescriptions must be:

(1) in writing or verified under Tex. Occ. Code Section 353.1015;

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

(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 June 15, 2007.

TRD-200702434
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 182. USE OF EXPERTS

22 TAC §182.9

The Texas Medical Board proposes new §182.9, concerning Selection of Reviewers in Cases of Utilization Review.

The new section provides that review of cases regarding the assessment and/or determination of the medical necessity of treatment will be referred to experts randomly selected from among those experts who participate in making such decisions for another individual, entity, or organization.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that for the first five-year period the new rule 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 section as proposed.

Mr. Simpson also has determined that for each year of the first five years the new rule as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to provide that review of medical necessity decisions will be made by experts who are engaged in making medical necessity decisions. 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 new rule 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 proposed new rule.

§182.9. Selection of Reviewers in Cases of Utilization Review.

Any complaint alleging a violation of the standards set by the Board for procedures necessary to make a reasoned medical decision in the assessment and/or determination of the medical necessity of treatment will be referred to experts randomly selected from among those experts who participate in making such decisions for another individual, entity, or organization.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702432
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 191. DISTRICT REVIEW COMMITTEES

22 TAC §191.4

The Texas Medical Board proposes amendments to §191.4, concerning Activities and Scope of Authority.

The proposed amendment deletes the provision that allows District Review Committee (DRC) members to serve as experts for the purpose of evaluating the medical competency of physicians under investigation. The proposed amendment also establishes that DRC members are allowed to participate in mediation and requires DRC members to have the same qualifications as expert panel members; however they do not need to meet the same selection criteria.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes the review of Chapter 191.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that, for the first five-year period the proposed amendment 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 section as proposed.

Mr. Simpson also has determined that, for each year of the first five years the amendment as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be to assure that DRC members are utilized appropriately and meet statutory requirements. 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 and §163.0045, 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.

§191.4. Activities and Scope of Authority.

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

~~[(c) After appropriate orientation and training by the board and the disciplinary process review committee, one of the committees, selected on a rotating basis, may be requested to review selected investigative files for evaluation of medical practice or professional competency and make recommendations for each investigative file to the board or to the board's investigative staff, as may be appropriate and applicable.]~~

(c) ~~[(d)]~~ After appropriate orientation and training by the board and the disciplinary process review committee, district review committee members may on occasion be requested by the executive director to participate in informal settlement conferences, probationary panels,

mediation, or perform other duties as may be assigned to committees or committee members. Pursuant to Chapter 187 of this title, (relating to Procedural Rules), the committee member shall make recommendations for each investigative file. A physician committee member who participates in an informal settlement conference on a complaint relating to medical competency must have the qualifications of an expert panel provided under §182.5(2) of this title (relating to Expert Panels). A DRC member is not required to meet the selection criteria of expert physician reviewers as set out in §182.8 of this title (relating to Expert Physician Reviewers) that requires an expert physician reviewer be in the same specialty as a physician who is the subject of a complaint.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702435
Donald W. Patrick, M.D.
Executive Director
Texas Medical Board
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 194. NON-CERTIFIED RADIOLOGIC TECHNICIANS

22 TAC §§194.2 - 194.6

The Texas Medical Board proposes amendments to §§194.2 - 194.6, concerning Non-Certified Radiologic Technicians.

The proposed amendments provide updates regarding the names of the Texas Medical Board and Department of State Health Services, and clarify that NCT registrations that are not renewed within 90 days will be considered expired.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes the review of Chapter 194.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that, for the first five-year period the amendments 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 sections as proposed.

Mr. Simpson also has determined that, for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be general cleanup of the chapter. 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.

Texas Occupations Code Annotated, §601.251, is affected by the proposal.

§194.2. Definitions.

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

(1) Board--The Texas Medical Board [~~State Board of Medical Examiners~~].

(2) Non-certified technician (NCT) or registrant--A person who is registered with the board and either:

(A) is listed on the current registry with the Texas Department of State Health Services [~~Health~~] and meets one of the following qualifications listed in clauses (i) and (ii) of this subparagraph;

(i) has completed a mandatory training program under 25 Texas Administrative Code, §143.17 (relating to Mandatory Training Programs for Non-Certified Technicians); or

(ii) if the person is licensed as a physician assistant in the State of Texas, has completed a mandatory training program under 25 Texas Administrative Code, §143.17 (relating to Mandatory Training Programs for Non-Certified Technicians) or has met the alternate training requirements under 25 Texas Administrative Code, §143.20 (relating to Alternate Training Requirements); or

(B) performs radiologic procedures for a physician to whom a hardship exemption was granted by the Texas Department of State Health Services [~~Health~~] within the previous year, as defined in 25 Texas Administrative Code, §143.19 (relating to Hardship Exemptions).

(3) (No change.)

§194.3. Registration.

(a) Any person in the State of Texas performing radiologic procedures, as defined in §194.5 of this title (relating to Non-Certified Technician's Scope of Practice), under the supervision of a current and active licensed Texas physician, must be registered with the Texas Medical Board [~~State Board of Medical Examiners~~]. The physician must also be registered with the board to supervise the non-certified technician.

(b) This section does not apply to registered nurses or to persons certified by the Department of State Health Services [~~Health~~] under the Medical Radiologic Technologist Certification Act.

(c) (No change.)

(d) Applicants shall be 18 years of age or older and either:

(1) provide proof of the applicant's registry with the Texas Department of State Health Services [~~Health~~] and meet one of the following qualifications listed in subparagraphs (A) and (B) of this paragraph:

(A) receive training and instruction as required in 25 Texas Administrative Code, §143.17 (relating to Mandatory Training Programs for Non-Certified Technicians); or

(B) if licensed as a physician assistant, receive training and instruction as required in 25 Texas Administrative Code, §143.17 (relating to Mandatory Training Programs for Non-Certified Technicians) or meet the alternate training requirements in 25 Texas Administrative Code, §143.20 (relating to Alternate Training Requirements); or

(2) perform radiologic procedures for a physician to whom a hardship exemption was granted by the Texas Department of State Health Services [~~Health~~] within the previous year under 25 Texas Administrative Code, §143.19 (relating to Hardship Exemptions).

§194.4. Annual Renewal.

(a) Registrants shall renew the registration annually by:

(1) submitting a completed registration application;

(2) paying a fee, as specified by the board under Chapter 175 (relating to fees, penalties, and forms) [, ~~to the Texas State Board of Medical Examiners by personal check, cashiers check or money order~~]; and

(3) providing proof of the registrant's renewal of status on the Texas Department of State Health Services [~~Health~~] registry or that the registrant is working under a physician hardship exemption, if applicable.

(b) If the registrant fails to comply with subsection (a) of this section on or before the expiration date of the registration, the following penalties as shown in paragraphs (1) and (2) of this subsection will be imposed:

(1) one to 90 days late--penalty fee set under Section 175.3(4) (related to penalties for non-certified radiologic technicians) [~~$25 plus the required annual registration fee~~];

(2) over 90 days late the registrant may not renew his or her registration, and the registration will be considered expired, [~~submitted to the board for cancellation~~] unless an investigation is pending. The registrant must submit a new application and comply with the requirements and procedures for obtaining a permit.

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

§194.5. Non-Certified Technician's Scope of Practice.

(a) A registrant may only perform the following radiologic procedures, as listed in paragraphs (1) and (2) of this subsection unless otherwise expressly permitted by statute or rule:

(1) bone densitometry utilizing a dual energy x-ray densitometer; or

(2) chest, spine, extremities, abdomen, skull studies or other radiologic procedures utilizing standard film or film screen combinations and an x-ray tube that is stationary at the time of exposure; however, a registrant may not perform a procedure which has been identified as dangerous or hazardous by the Texas Department of State Health Services [~~Health~~] in 25 TAC §143.16 (Dangerous or Hazardous Procedures).

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

(d) All registrants must comply with the safety rules of the Texas Department of State Health Services [~~Health~~] relating to the control of radiation as set forth in the Texas Regulations for the Control of Radiation, 25 TAC Chapter 289.

§194.6. Suspension, Revocation or Nonrenewal of Registration.

(a) The board may refuse to issue a registration to an applicant and may, following notice of hearing and a hearing as provided for in the Administrative Procedure Act, take disciplinary action against any non-certified technician who:

(1) violates the Medical Practice Act, the rules of the Texas Medical Board [~~State Board of Medical Examiners~~], an order of the board previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the board;

(2) violates the Medical Radiologic Technologist Certification Act or the rules promulgated by the Texas Department of State Health Services [~~Health~~];

(3) violates the rules of the Texas Department of State Health Services [~~Health~~] for control of radiation;

(4) - (10) (No change.)

(b) (No change.)

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702436
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 197. EMERGENCY MEDICAL SERVICE

22 TAC §§197.1 - 197.4

The Texas Medical Board proposes amendments to §§197.1 - 197.4, concerning Emergency Medical Service.

The proposed amendments provide updates regarding the names of the Texas Medical Board and Department of State Health Services, require that EMS medical directors report to the board the names and license numbers of all emergency medical personnel who work under a medical director's supervision, and remove the requirement that on-line physicians be familiar with the capabilities of the prehospital providers, as well as local EMS operational policies and regional critical care referral protocols.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes the review of Chapter 197.

Robert D. Simpson, General Counsel, Texas Medical Board, has determined that, for the first five-year period the proposed amendments 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 sections as proposed.

Mr. Simpson also has determined that, for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be general cleanup of the chapter and affirms that EMS medical directors are responsible for those under their supervision. 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 and §157.003, 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.

Texas Health and Safety Code, Chapter 773, is affected by the proposal.

§197.1. Purpose.

(a) The purpose of this chapter is to facilitate the most appropriate utilization of the skills of physicians who delegate health care tasks to qualified emergency medical services [~~service~~] (EMS) person-

nel [~~technicians~~]. Such delegation shall be consistent with the patient's health and welfare and shall be undertaken pursuant to supervisory guidelines, which take into account the skill, training, and experience of both physicians and EMS personnel [~~technicians~~].

(b) This chapter addresses:

(1) the qualifications, responsibilities, and authority of physicians who provide medical direction and/or supervision of prehospital care by EMS personnel;

(2) the qualifications, authority, and responsibilities of physicians who serve as medical directors (off-line);

(3) the relationship of EMS providers to the off-line medical director;

(4) components of on-line medical direction (direct medical control), including the qualifications and responsibilities of physicians who provide on-line medical direction and the relationship of prehospital providers to those physicians; and

(5) the responsibility of EMS personnel to private and intervenor physicians.

(c) This chapter is not intended, and shall not be construed to restrict a physician from delegating administrative and technical or clinical tasks not involving the exercise of independent medical judgment to those specially trained individuals instructed and directed by a licensed physician who accepts responsibility for the acts of such allied health personnel. Likewise, nothing in this chapter shall be construed to prohibit a physician from instructing a technician, assistant, or other employee, who is not among the classes of EMS personnel [~~technicians~~], as defined in §197.2 of this title (relating to Definitions), to perform delegated tasks so long as the physician retains supervision and control of the technician, assistant, or employee.

(d) Nothing in this chapter shall be construed to relieve the supervising physician of the professional or legal responsibility for the care and treatment of his or her patients. A physician who, after agreeing to supervise EMS personnel, fails to do so adequately and properly, may be subject to disciplinary action pursuant to the Medical Practice Act.

(e) Implementation of this chapter will enhance the ability of EMS systems to assure adequate medical direction of all advanced prehospital providers and many basic level providers, as well as compliance by personnel and facilities with minimum criteria to implement medical direction of prehospital services. A medical director shall not be held responsible for noncompliance with this chapter if the EMS administration fails to provide the necessary administrative support to permit compliance with the provisions of this chapter.

§197.2. Definitions.

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

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

(3) Board--The Texas Medical Board [~~State Board of Medical Examiners~~].

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

(6) Emergency medical services personnel--Those individuals certified or licensed by the Texas Department of State Health Services (DSHS) [~~Health (TDH)~~] to provide emergency medical care.

(7) - (9) (No change.)

(10) Prehospital providers--All DSHS [~~TDH~~] certified or licensed personnel providing medical care in an out-of-hospital environment.

(11) - (12) (No change.)

§197.3. Off-line Medical Director.

(a) An off-line medical director shall be:

(1) a physician licensed to practice in Texas and shall be registered as an EMS medical director with the Texas Department of State Health Services [~~Health~~];

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

(b) The off-line medical director shall be required to:

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

(3) establish and monitor compliance with training guidelines which meet or exceed the minimum standards set forth in the Texas Department of State Health Services [~~Health~~] EMS certification regulations;

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

(8) develop a letter or agreement or contract between the medical director(s) and the EMS administration outlining the specific responsibilities and authority of each. The agreement should describe the process or procedure by which a medical director may withdraw responsibility for EMS personnel for noncompliance with the Emergency Medical Services [~~Service~~] Act, the Health and Safety Code, Chapter 773, the rules adopted in this chapter, and/or accepted medical standards;

(9) - (12) (No change.)

(13) establish criteria for selection of a patient's destination; [~~and~~]

(14) develop and implement a comprehensive mechanism for management of patient care incidents, including patient complaints, allegations of substandard care, and deviations from established protocols and patient care standards; and[~~.~~]

(15) report to the board the names of and license numbers of all emergency medical services personnel under the medical director's supervision.

§197.4. On-Line Medical Direction.

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

(c) A physician providing or delegating on-line medical direction ("on-line physician") shall be appropriately trained in the use of prehospital protocols[~~, and shall be familiar with the capabilities of the prehospital providers, as well as local EMS operational policies and regional critical care referral protocols~~].

(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 June 15, 2007.

TRD-200702437
Donald W. Patrick, M.D., J.D.
Executive Director
Texas Medical Board
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 305-7016

♦ ♦ ♦

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER D. FIRE AND ALLIED LINES INSURANCE

DIVISION 4. SMALL INSURER AND NEW INSURER RATE FILING REQUIREMENTS

28 TAC §5.3301

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

The Texas Department of Insurance proposes the repeal of Division 4, §5.3301, concerning rate filing requirements under Insurance Code Article 5.142 for small and new insurers writing residential property insurance. The repeal of this division is necessary because pursuant to §5.3301(i) and Insurance Code Article 5.142 §17, the section expired on December 1, 2004. The Department identified this division for repeal as part of the Department's ongoing review of existing rules pursuant to Government Code §2001.039.

J'ne Byckovski, Chief Actuary, Property and Casualty Division, has determined that during the first five years that the proposed repeal is in effect, there will be no fiscal impact on state or local government. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Byckovski has also determined that for each year of the first five years that the proposed repeal is in effect, the anticipated public benefit will be the removal of obsolete and potentially confusing provisions from the Texas Administrative Code. There is no anticipated economic cost to persons who are required to comply with the proposed repeal. There is no anticipated difference in cost of compliance between small and large businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on July 30, 2007 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 comment must be simultaneously submitted to J'ne Byckovski, Chief Actuary, Property and Casualty Division, Mail Code 105-5F, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing must be submitted separately to the Office of 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.

The repeal of Division 4, §5.3301 is proposed pursuant to Insurance Code §36.001, which provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

No statute is affected by the proposal.

§5.3301. Rate Filing Requirements Under Article 5.142 for Small and New Insurers Writing Residential Property Insurance.

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702508
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 463-6327

♦ ♦ ♦

SUBCHAPTER O. FLEXIBLE RATING PROGRAM FOR CERTAIN INSURANCE LINES

28 TAC §5.9500

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

The Texas Department of Insurance proposes repeal of Subchapter O, §5.9500, defining small and medium-sized insurers as referenced in Insurance Code Article 5.101, concerning the Flexible Rating Program for Certain Insurance Lines. The repeal of this subchapter is necessary because the expiration of Article 5.101 on December 1, 2004, obviates the need for the subchapter. This section defines the terms "small and medium-sized insurers" and "lines of property and casualty insurance" solely for the purpose of Article 5.101. The Department identified this subchapter for repeal as part of the Department's ongoing review of existing rules pursuant to Government Code §2001.039.

J'ne Byckovski, Chief Actuary, Property and Casualty Division, has determined that during the first five years that the proposed repeal is in effect, there will be no fiscal impact on state or local government. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Byckovski has also determined that for each year of the first five years that the proposed repeal is in effect, the anticipated public benefit will be the removal of obsolete and potentially confusing provisions from the Texas Administrative Code. There is no anticipated economic cost to persons who are required to comply with the proposed repeal. There is no anticipated difference in cost of compliance between small and large businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on July 30, 2007 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 comment must be simultaneously submitted to J'ne Byckovski, Chief Actuary, Property and Casualty Division, Mail Code 105-5F, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing must be submitted separately to the Office of 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.

The repeal of Subchapter O, §5.9500 is proposed pursuant to Insurance Code §36.001, which provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

No statute is affected by the proposal.

§5.9500. Definition of Small and Medium-Sized Insurers as Referenced in Article 5.101 of the Insurance Code.

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702509
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 463-6327

♦ ♦ ♦

SUBCHAPTER Q. INDEPENDENT DATA

28 TAC §5.9700

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

The Texas Department of Insurance proposes the repeal of Subchapter Q, §5.9700, concerning the fee schedule for the Department's statistical agent, Acxiom Corporation. This subchapter, which provides the fee schedule for this statistical agent contractor to provide collection, maintenance, and reporting of the statistical data reported by insurance companies under each of the Department's statistical plans, is not necessary because the Department no longer contracts with this statistical agent. Insurance Code §38.206, which allows statistical agents to collect fees, further obviates the need for the subchapter. The Department identified this subchapter for repeal as part of the Department's ongoing review of existing rules pursuant to Government Code §2001.039.

Gary Gola, Director, Data Services, Property and Casualty Division, has determined that during the first five years that the proposed repeal is in effect, there will be no fiscal impact on state or local government. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. Gola has also determined that for each year of the first five years that the proposed repeal is in effect, the anticipated public benefit will be the removal of obsolete and potentially confusing provisions from the Texas Administrative Code. There is no anticipated economic cost to persons who are required to comply with the proposed repeal. There is no anticipated difference in cost of compliance between small and large businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on July 23, 2007 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 comment must be simultaneously submitted to Gary Gola, Director, Data Services, Property and Casualty Division, Mail Code 105-5S, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing must be submitted separately to the Office of 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.

The repeal of Subchapter Q, §5.9700 is proposed pursuant to Insurance Code §36.001, which provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The proposed repeal affects the following statute: Insurance Code §38.206.

§5.9700. Fee Schedule.

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702510
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 463-6327

♦ ♦ ♦

SUBCHAPTER R. TEMPORARY RATE REDUCTION FOR CERTAIN LINES OF INSURANCE

28 TAC §§5.9800 - 5.9811

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

The Texas Department of Insurance proposes the repeal of Subchapter R, §§5.9800 - 5.9811, concerning temporary rate reductions for certain lines of liability insurance affected by tort reform legislation enacted by the 73rd and 74th Legislatures. The repeal of this subchapter is necessary because the need for the rules has been eliminated. The rules establish the methodology to be followed and provide the loss and ALAE reduction percentages to be used to determine the rate reduction factors for certain lines or sublines of liability insurance affected by the tort reforms such that savings from the tort reforms would be passed to all insurers' policyholders on a prospective basis. The final loss and ALAE reduction percentages were applicable to policies effective on or after January 1, 2000, but before January 1, 2001. The repeal of Insurance Code Article 5.131, effective April 1, 2007, requiring mandatory rate reductions, further obviates the need for this subchapter. The Department identified the subchapter for repeal as part of the Department's ongoing review of existing rules pursuant to Government Code §2001.039.

J'ne Byckovski, Chief Actuary, Property and Casualty Division, has determined that during the first five years that the proposed repeal is in effect, there will be no fiscal impact on state or local government. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Byckovski has also determined that for each year of the first five years that the proposed repeal is in effect, the anticipated public benefit will be the removal of obsolete and potentially confusing provisions from the Texas Administrative Code. There is no anticipated economic cost to persons who are required to comply with the proposed repeal. There is no anticipated difference in cost of compliance between small and large businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on July 30, 2007 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 comment must be simultaneously submitted to J'ne Byckovski, Chief Actuary, Property and Casualty Division, Mail Code 105-5F, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing must be submitted separately to the Office of 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.

The repeal of Subchapter R, §§5.9800 - 5.9811 is proposed pursuant to Insurance Code §36.001, which provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

No statute is affected by the proposal.

§5.9800. Purpose and Scope.

§5.9801. Definitions.

§5.9802. Application to Insurers and Monitoring of Insurers.

§5.9803. Rulemaking Procedures for Reductions in Rates.

§5.9804. Loss and ALAE Reduction Percentages by Line.

§5.9805. Calculation and Application of Rate Reduction Factor.

§5.9806. Duration.

§5.9807. Filing Requirements.

§5.9808. Administrative Relief.

§5.9809. Declaration of Inapplicability.

§5.9810. Appeal of Rate Reduction and Severability.

§5.9811. Loss and ALAE Reduction Percentages Applicable in Specified Years.

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702511
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 463-6327

♦ ♦ ♦

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 120. COMPENSATION PROCEDURE--EMPLOYERS

28 TAC §120.2

The Texas Department of Insurance, Division of Workers' Compensation proposes amendments to §120.2 concerning employer's first report of injury and notice of injured employee rights and responsibility. These amendments are necessary to implement Labor Code §409.005 and to provide for the distribution of the notice of employee rights and responsibilities contemplated by Labor Code §404.109.

The proposed amendments to §120.2 are necessary to clarify that the requirement for the first report of injury in regard to an injury is triggered when the employee is absent from work for more than one day due to the injury, to provide for the distribution of the Notice of Injured Employee Rights and Responsibilities (Notice of Rights and Responsibilities) prepared by the Office of Injured Employee Counsel (OIEC) pursuant to §404.109, and to replace notice language in the rule with a reference to the form number for the notice prepared by OIEC that contains current information, and to update enforcement language. Other changes update legal references and make grammatical corrections.

The proposal changes all references from "commission" to "Division." The proposed amendment to subsection (a) modifies the language of the subsection to improve its clarity and readability; the amendment does not change the substantive requirements under this subsection. The proposed amendments to subsection (b) clarify what the employer's first report of injury shall contain. This includes the information required by §120.1(a), any additional information prescribed by the Division, and the information necessary for an insurance carrier to electronically transmit a first report of injury to the Division.

The proposed amendment to subsection (c) clarifies that it is the employee's absence from work for more than one day due to an injury that triggers the employer's requirement to file with the carrier a first report of injury. The proposed amendment to subsection (d) clarifies the requirement that an employer provide the employee a copy of the notice of rights and responsibilities at the time the written report of injury is provided to the employee. The specific language of the notice is removed from §120.2 and replaced with a reference to the Notice of Rights and Responsibilities. The proposed amendment to subsection (e) adds the requirement that if the first report of injury is not required to be filed, the Notice of Rights and Responsibilities must still be provided to the injured employee no later than the eighth day after the employer receives notice of the injury. The proposed amendment to subsection (f) notes that the employer should maintain a record of the date the Notice of Rights and Responsibilities is given to the employee and a record of the date the report of injury is filed with the insurance carrier. The requirement that the employer maintain a record of the date the report is filed with the insurance carrier is not a substantive change, as this requirement is present in the currently enacted version of §120.2. The proposed amendment to subsection (g) modifies the language of the subsection to improve its clarity and readability; the amendment does not change the substantive requirements under this subsection. Proposed subsection (h) notes that failure to comply with this section is an administrative violation, but removes language regarding penalties to comply with amendments to the Labor Code that remove specific classification of such a violation.

Brent Hatch, Policy Advisor, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the amended rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. Hatch has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the proposed amended section will be notice to the employee of the injured employee's rights and responsibilities under the Texas worker's compensation system as set out in the Notice of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System (Notice of Rights and Responsibilities) prepared by the Office of Injured Employee Counsel.

Based on the amendments to the rule, an employer that is not required to file a report based on less than one day of lost time, but is still required to provide the injured employee with a copy of the Notice of Rights and Responsibilities, will have an additional cost not present under the currently enacted version of §120.2. The probable economic cost to persons required to comply with subsection (e) is estimated to be less than 90 cents per workplace injury, disease, or death. The cost estimate is based on the consideration that the Notice of Rights and Responsibilities can be copied for approximately 10 cents per page and, if hand delivery at work is not available, mailed to the employee at the additionally estimated cost of 15 cents per envelope and 41 cents postage. The cost per employer of providing this publication is based on the number of injuries that occur at the workplace.

For an employer that is required to file a report based on more than one day of lost time, the additional cost will be approximately 20 cents. This cost estimate is based on the consideration that the Notice of Rights and Responsibilities can be copied for approximately 10 cents per page and delivered with the report. There is no additional cost for delivery for employers that provide the publication to injured employees with the report because the currently enacted version of the rule requires a copy of the first report of injury to be delivered to an injured employee. There will be no adverse economic impact on small and micro businesses. There is no difference in the cost of compliance per claim between small and large businesses. It is neither legal nor feasible to waive the requirements of the section for small or micro-businesses because compliance with the requirements of Labor Code §409.005 is mandatory for all employers.

To be considered, written comments on the proposal must be received no later than 5:00 p.m. on July 30, 2007. Comments may be submitted via the Internet through the Division's Internet website at *http://www.tdi.state.tx.us/wc/rules/proposedrules/toc.html* or by mailing or delivering your comments to Victoria Ortega, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. Any request for a public hearing must be submitted separately to the Office of General Counsel by 5:00 p.m. on July 30, 2007. If a hearing is held, written and oral comments presented at the hearing will be considered.

The amendments are proposed under the Texas Labor Code §§404.109, 409.005, 402.00111, and 402.061. Section 404.109 calls for the Public Counsel to prepare and provides for the Commissioner of Workers' Compensation and the Commissioner of Insurance to distribute by rule a notice of injured employee rights and responsibilities. Section 409.005 provides the procedure for filing a report of injury, the format to be used, and authorizes the adoption of rules regarding the information that must be included in the report and implementation of electronic filing of the reports. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

The following sections are affected by this proposal: Labor Code §404.109 and §409.005.

§120.2. Employer's First Report of Injury and Notice of Injured Employee Rights and Responsibilities.

(a) The employer shall report to the employer's insurance carrier each death, each occupational disease of which the employer has received notice of injury or has knowledge, and each injury that results in more than one day's absence from work for the injured employee. As used in this section, the term "knowledge" includes [~~means~~] receipt of written or oral [~~verbal~~] information regarding diagnosis of an occupational disease, or the diagnosis of an occupational disease through direct examination or testing by a doctor employed by the employer.

(b) [~~The report shall contain the information required by §120.1(a) of this title (relating to Employer's Record of Injuries), any additional information prescribed by the commission in accordance with the Texas Labor Code, §402.042(b)(11), and shall contain the information necessary for an insurance carrier to electronically transmit a first report of injury to the commission.~~] The Division [~~commission~~] shall prescribe the form, format, and manner of the employer's first report of injury (Report). The report shall contain:

(1) the information required by §120.1(a) of this title (relating to Employer's Record of Injuries);

(2) any additional information prescribed by the Division in accordance with the Labor Code §402.00128(b)(10); and

(3) the information necessary for an insurance carrier to electronically transmit a first report of injury to the Division.

(c) The report shall be filed with the insurance carrier not later than the eighth day after having received notice of or having [~~the receipt of notice of injury or the acquisition of~~] knowledge of an occupational disease, or death, or not later than the eighth day after the employee's absence from work for more than one day [~~from work~~] due to a work-related injury [~~or death~~]. For purposes of this section, a report is filed when personally delivered, mailed, reported via tele-claims, electronically submitted, or sent via facsimile. [~~The employer shall maintain a record of the date the report of injury is filed with the insurance carrier.~~]

(d) The employer shall provide a written copy of the report and a written copy of the Notice of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System (Notice of Rights and Responsibilities) to the injured employee, or to the employee's last known mailing address, at the time the report is filed with the insurance carrier. The Notice of Rights and Responsibilities shall be in English and Spanish, or in English and any other language common to the employee. The written report may be the report specified in subsection (b) of this section, or at a minimum shall contain the information listed in §120.1(a) of this title (relating to Employer's Record of Injuries).

(e) The Notice of Rights and Responsibilities may be obtained from:

(1) the department's website at www.tdi.state.tx.us;

(2) the Office of Injured Employee Counsel's website at www.oiec.state.tx.us; or

(3) Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas, 78744-1609.

(f) If a first report of injury is not required to be filed, the employer must still provide the injured employee with a copy of the Notice of Rights and Responsibilities. The Notice of Rights and Responsibilities shall be provided by the employer not later than the eighth day after having received notice of or having knowledge of an injury to the employee. The Notice of Rights and Responsibilities may be personally delivered, mailed, or sent via facsimile.

[(e) The employer shall also provide the employee a summary of rights and responsibilities at the time the report required in subsection (c) of this section is filed with the insurance carrier. The text for the summary shall be in English and Spanish, or in English and any other language common to the employee. This does not preclude the employer or carrier from providing the employee with additional information but such information must be separate from and in addition to the text contained in this subsection and may not infer that the additional information is being provided or required by the Commission. The following English text and the Spanish text provided by the commission must be used without any additional words or changes.]
[Figure: 28 TAC §120.2(e)]

(g) [(f)] The employer shall maintain a record of the date the copy of the report of injury and the date the Notice of Rights and Responsibilities [summary of rights and responsibilities] were provided to the employee. The employer shall also maintain a record of the date the report of injury is filed with the insurance carrier.

(h) [(g)] If the insurance carrier has not received the [a] report [has not been received by the insurance carrier], the employer has the burden of proving that the report was filed within the required time frame. If the carrier receives the report by mail, it will be presumed that the report was mailed four days prior to the date received by the carrier. The employer has the burden of proving that good cause exists if the employer failed to timely file or provide the report.

(i) [(h)] A party who fails to comply with this section commits an administrative violation. [Failure of an employer to file the report as required with the insurance carrier or to provide a copy of the report as required to the employee without good cause is subject to a penalty not to exceed $500, pursuant to Texas Labor Code, §409.005, and may be subject to a penalty not to exceed $10,000 pursuant to Texas Labor Code, §415.021, for repeated violation. An employer who fails to file the report as required by this rule and by the Texas Labor Code, §409.005, waives the right to reimbursement of voluntary benefits even if no administrative penalty is assessed.]

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

Filed with the Office of the Secretary of State on June 14, 2007.

TRD-200702424
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 804-4715

♦ ♦ ♦

CHAPTER 137. RETURN-TO-WORK
SUBCHAPTER D. TREATMENT PLANNING

28 TAC §137.300

(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 Insurance, Division of Workers' Compensation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Insurance, Division of Workers' Compensation, proposes the repeal of §137.300, Required Treatment Planning.

Since publication of the adopted disability management rules, workers' compensation system participants, including insurance carriers, health care providers, and associations, have expressed the need for additional time to establish systems and processes to appropriately address required treatment planning. System participants also expressed a need for additional time to communicate and develop treatment planning parameters that are mutually acceptable.

Due to a concern that system participants would not be able to initiate the treatment planning requirements without some lapses in care for the injured employees, the Division proposes repeal of the requirements. The repeal of this section will allow the Division time to address concerns raised by system participants, and it will allow the Division the opportunity to work further with system participants to develop required treatment planning guidelines that effectively achieve the goals and intent of the Legislature in Labor Code §413.011. Treatment planning is an integral part of disability management and a pilot treatment planning program will be initiated to allow the Division to work with system participants in the development of effective parameters for required treatment planning and to prepare their processing systems and business practices.

Jaelene Fayhee, Policy and Research, Executive Deputy Commissioner, Division of Workers' Compensation, has determined that for each year of the first five years the proposed repeal is in effect, there will be no fiscal impact to state and local governments as a result of the repeal. The fiscal impact on the Division is likely to be minimal since the general administration and monitoring requirements for the system remain unchanged. There will be no measurable effect on local employment or the local economy as a result of the proposed repeal.

Ms. Fayhee has also determined that for each year of the first five years the proposed repeal is in effect the public benefits anticipated as a result of the repeal will be additional time to establish systems and processes to implement treatment planning.

There are no anticipated costs to system participants as a result of the proposed repeal because the rule being repealed never became effective. However, any potential savings anticipated with the previous adoption of §137.300 will not accrue to system participants at this time. Although overall savings are still anticipated with the implementation of §§137.1, 137.10, and 137.100, it is difficult to extract a specific impact for the repeal of §137.300 due to the overlapping relationships of these disability management rules. Additionally, there may be some realignment of costs to system participants as the treatment planning process identified in §137.300 is supplanted by the use of treatment guidelines in §137.100 and the preauthorization, concurrent review, and voluntary certification process identified in §134.600.

There is no difference in the cost of compliance between a large and small or micro-business as a result of the proposed repeal. Based on the cost of labor per hour, there is no disproportionate

economic impact on small or micro-businesses. Economic costs to injured employees are not anticipated.

To be considered, written comments on the proposal must be received no later than 5:00 p.m. on July 30, 2007. Comments may be submitted via the Internet through the Division's Internet website at *http://www.tdi.state.tx.us/wc/rules/proposedrules/toc.html* or by mailing or delivering your comments to Victoria Ortega, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. Any request for a public hearing must be submitted separately to the Office of General Counsel, MS-1, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Austin, Texas 78744 before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

The repeal is proposed under the Labor Code §§413.011(e), 413.011(g), 401.011, 413.021, 409.005, 408.023, 408.025, 413.017, 413.018, 413.013, 408.021, 402.00111, and 402.061. Section 413.011(e) provides that the Commissioner by rule shall adopt treatment guidelines and return-to-work guidelines and may adopt individual treatment protocols with specific criteria for such adoption. Section 413.011(g) provides that the Commissioner may adopt rules relating to disability management that are designed to promote appropriate health care at the earliest opportunity after the injury to maximize injury healing and improve stay-at-work and return-to-work outcomes through appropriate management of work-related injuries or conditions. Section 401.011 contains definitions used in the Texas workers' compensation system (in particular, §401.011(18)(a), the definition of "evidence-based medicine," §401.011(22)(a), the definition of "health care reasonably required" and §401.011(42), the definition of "treating doctor"). Section 413.021 requires an insurance carrier to provide the employer with return-to-work coordination services as necessary to facilitate an employee's return to employment. Section 409.005 provides the procedure for filing a report of injury, the format to be used, authorizes the adoption of rules regarding the information that must be included in the report, and requires the employer to notify the employee, the treating doctor, and the insurance carrier of the existence or absence of opportunities for modified duty or a modified duty return-to-work program available through the employer. Section 408.023 requires the Division to develop a list of doctors licensed in Texas who are approved to provide health care services under the Workers' Compensation Act and authorizes the Commissioner to adopt rules to define the role of the treating doctor and to specify outcome information to be collected for a treating doctor. Section 408.025 authorizes the Commissioner by rule to adopt requirements for reports and records, and provides that the treating doctor is responsible for maintaining efficient utilization of health care. Section 413.017 provides that certain medical services are presumed reasonable. Section 413.018 provides that the commissioner by rule shall provide for the periodic review of medical care provided in claims in which guidelines for expected or average return to work time frames are exceeded and the Division shall review the medical treatment provided in a claim that exceeds the guidelines and may take appropriate action to ensure that necessary and reasonable care is provided. Section 413.013 authorizes the Commissioner by rule to establish programs for prospective, concurrent, and retrospective review and resolution of disputes regarding health care treatments and services, for the systematic monitoring of the necessity of treatments administered and fees charged and paid for medical treatments to ensure that the medical policies or guidelines are not exceeded, to detect practices and patterns by insurance carriers, and to increase the intensity of review for compliance with the medical policies or fee guidelines. Section 408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed (specifically health care that enhances the ability of the employee to return to or retain employment) and provides that, except in an emergency, all health care must be approved or recommended by the employee's treating doctor. Section 402.00111 provides that the Commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides that the Commissioner of workers' compensation has the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

The following sections are affected by this proposal: Labor Code, §§413.011(e), 413.011(g), 401.011, 413.021, 409.005, 408.023, 408.025, 413.017, 413.018, 413.013, and 408.021.

§137.300. Required Treatment Planning.

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702495
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 804-4715

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

PART 11. OFFICE OF THE FIRE FIGHTERS' PENSION COMMISSIONER

CHAPTER 304. MEMBERSHIP IN THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §304.2

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

The State Board of Trustees of the Texas Emergency Services Retirement System proposes to repeal 34 *Texas Administrative Code* §304.2, relating to the probationary period for membership in the Texas Emergency Services Retirement System (System).

The rule on probationary period before membership is repealed because identical text will be in statute, Title 8, *Government Code,* Subtitle H. Texas Emergency Services Retirement System, §862.0021, created under House Bill 2400 which goes into effect September 1, 2007. As stated in statute, a participating department may impose a probationary period for a volunteer

or auxiliary employee. If a department chooses to adopt a probationary period, the period must end not later than six months after the date the person begins service with the participating department; and the department is not required to pay contributions during the probationary period. The person's membership would begin the date that the department begins payment of contributions for that person, without regard to whether the person's service is subject to a probationary period for other purposes.

There is no actuarial impact on the System relating to repeal of this rule as determined by the firm of Rudd and Wisdom, Inc.

Kevin Deiters, Program Director, has determined that, for the first five years that the repeal is in effect, there would be limited to no cost to state or local governments. There is no anticipated economic impact to small businesses or individuals by the repeal of the rule.

Mr. Deiters has also determined that, for each year of the first five-year period during the repeal of the rule, the public benefit anticipated will be to provide potential members with a clear process through the enacted statute relating to the probationary period before membership. This will enable departments to recruit volunteer fire fighters and emergency services personnel to protect local communities.

Comments on the proposal may be submitted in writing to Lisa Ivie Miller, Commissioner, Office of the Fire Fighters' Pension Commissioner, P.O. Box 12577, Austin, Texas 78711-2577 no later than August 1, 2007. Comments may also be submitted electronically to *rules@ffpc.state.tx.us* or faxed to (512) 936-3480.

The repeal of this rule is proposed under the statutory authority of *Government Code,* §865.006, and it concerns §862.0021.

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

§304.2. Probationary Period for Membership.

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702513
Kevin Deiters
Policy Director
Office of the Firefighters' Pension Commissioner
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 463-9935

♦ ♦ ♦

CHAPTER 306. CREDITABLE SERVICE FOR MEMBERS OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §306.1

The State Board of Trustees of the Texas Emergency Services Retirement System proposes to amend 34 *Texas Administrative Code* §306.1, regarding credit for certain prior service of members of the Texas Emergency Services Retirement System (System).

The proposed rule amendment will authorize participating departments to purchase pension credit for prior service of its members performed before the department joined the System. The System provides retirement, disability, and death benefits for volunteer fire fighters and EMS personnel in departments that participate in the System.

The proposed amended rule will simplify the administration of the pension system by limiting the options for and the time period in which a department may purchase prior service for participating members under this section. The proposal establishes 10 years as the maximum amount of qualified prior service credit in the System that a department may purchase for a member under this section. The proposal will allow a new department to purchase prior service credit within two years of joining the System.

If the proposed rule is adopted, it will eliminate the option for a participating department to purchase an accrued time benefit for prior service performed by a member prior to entry into the System. The proposed rule will eliminate the current prior service options known as "Accrued Time" or "Accrued Time with Buyback" to reduce the complexity of administration and to eliminate options that could provide inadequate benefits.

The Board was also concerned that the purchase of accrued time benefits by departments would result in fewer members vesting in the System and limit the ability of members to qualify for System pension benefits. Although the "accrued time" option allowed departments to provide equivalent benefits for prior service performed under the Texas Local Fire Fighters Retirement Act, the service purchased did not count toward System vesting or retirement benefits. All prior service purchased under the proposed rule will count as qualified service in the System and will allow participating members to vest sooner and receive higher benefits from the System.

Kevin Deiters, Program Director, has determined that the proposed rule amendment will reduce costs to those local municipal governments and emergency services districts purchasing prior service by reducing the minimum rate and by limiting the maximum period of prior service that a department may purchase for a member. The proposed rule will allow local municipal governments and emergency services districts to purchase prior service at any contribution rate or rates that equal or exceed the minimum contribution rate in effect for the period covered. The proposed amendment will reduce costs to the State by simplifying the process and reducing the amount of staff time needed to prepare and present financial estimates to the interested parties. The simplified approach will also reduce the cost to the agency for computer programming and actuarial testing.

In 2006, the State Board adopted rules increasing the minimum contribution rate by $4 per year until the minimum rate reaches $36 per member per month in 2011. Departments purchasing prior service credit for service performed before September 1, 2005 could purchase that service at the $12 minimum contribution rate that was in effect before September 1, 2005. The proposed amendment will also limit the amount of qualified service that a department may purchase to 10 years instead of 15 years. This reduction in the maximum number of years of service that a participating department may purchase is needed to make the purchase of prior service more affordable.

Kevin Deiters, Program Director, has determined that, for the first five years that the amended rule is in effect, departments purchasing prior service credit will have more flexibility in setting the rate and ultimate cost to purchase qualified prior service credit in the System for their members.

Mr. Deiters has also determined that, for the first five years that the proposed amended rule is in effect, the public benefit anticipated as a result of the adoption of the new rule will be to provide participating departments with improved benefits to recruit volunteer fire fighters and emergency services personnel to protect local communities. Small businesses and individuals will not be affected by the proposed amendment.

This agency hereby certifies that the proposed rule amendments have been reviewed by the System's retained actuaries. It is their opinion that since the proposed rule amendments would not change a department's responsibility for the financing of the purchase of prior service credit, the proposed rule amendments are cost neutral and will have no actuarial effect on the System.

Comments on the proposed amendment may be submitted in writing to Lisa Ivie Miller, Commissioner, Office of the Fire Fighters' Pension Commissioner, P.O. Box 12577, Austin Texas 78711-2577 no later than July 31, 2007. Comments may also be submitted electronically to *rules@ffpc.state.tx.us* or faxed to (512) 936-3480.

The amended rule is proposed under the statutory authority of Title 8, *Government Code,* Subtitle H, Texas Emergency Services Retirement System, Chapter 863, Creditable Service.

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

§306.1. Prior Service Credit for Members of participating Departments.

(a) A department that elects to participate in the pension system may, before the second anniversary of the date the department begins participation, make a one-time election to purchase service credit for qualified service performed for the department before the effective date of departmental participation by the persons who became members of the pension system on the effective date of the departmental participation. [~~A department that elects to participate in the pension system may, at the first meeting of the local board, elect to purchase service credit for service performed by the persons who became members on the effective date of departmental participation.~~]

(b) The maximum amount of prior service credit a member may receive under this section is 10 years. A department may choose to purchase prior service credit for a maximum number of less than 10 years. The pension system shall grant prior service credit under this section if the department agrees in writing to finance the prior service credit by a lump-sum payment or within a period not to exceed 10 years from the effective date of the election to purchase the credit.

(c) The cost to finance the purchase of prior service credit is based on the actuarially assumed rate of investment return on fund assets at the time payment for the credit begins. A department may purchase prior service credit at any contribution rate at or above the minimum provided by statute or board rule for the period purchased.

(d) To purchase prior service credit, a department must provide the commissioner with a detailed, verified record of prior service showing the amount of service performed by each member of the department. The record for each member must include the member's date of birth and entry date in the department. [~~The commissioner shall furnish to each participating department that agrees to purchase prior service credit a record of member prior service to be completed and returned to the commissioner showing the amount of prior service performed by each member of the department. The record must be signed by the chair and secretary of the local board and the administrative head of the department and be accompanied by a copy of the minutes of the local board showing approval of the amounts of prior service credit given the members.~~]

(e) The maximum amount of prior service credit provided by this rule applies only to prior service credit purchased, or under a written agreement to be financed that is instituted, on or after September 1, 2007. Prior service credit purchased, or under a written agreement to be financed, under a procedure administered by the pension system before September 1, 2007, is subject to the maximum amount of credit and the terms and value in effect under system procedures at the time of purchase or written agreement to purchase.

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702514
Kevin Deiters
Policy Director
Office of the Fire Fighters' Pension Commissioner
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 463-9935

♦ ♦ ♦

CHAPTER 308. BENEFITS FROM THE TEXAS EMERGENCY RETIREMENT SYSTEM

34 TAC §308.3

The State Board of Trustees of the Texas Emergency Services Retirement System proposes to amend 34 *Texas Administrative Code* §308.3, relating to disability retirement benefits in the Texas Emergency Services Retirement System (System).

The proposed amendment to the rule on disability retirement annuities will provide for the amounts paid to a recipient of a disability annuity and the portions awarded based on the departmental contribution rates. System members under the statutory authority of amendments to *Government Code,* §864.004 and §864.005 which were enacted by House Bill 2400, 80th Regular Legislative Session and which go into effect September 1, 2007 provides for a clear process for the implementation of both temporary and permanent disability for any person injured during the service of performing emergency services duties. This statutory change sets the parameters for eligibility for disability retirement benefits and the process for certification and continuance of disability benefits. The rule amendment deletes reference to the previous process of applying to the Social Security Administration for certification as permanently disabled by the second anniversary of the disability, in conformity with the amended statute.

As determined by the firm of Rudd and Wisdom, Inc. the changes in §864.004 and §864.005 of the *Government Code* would have the potential to slightly reduce the actuarial liability for on-duty disability benefits. However, in the August 31, 2006 actuarial valuation of the System, only 0.7% (12 of 1,766) of the System's retirees and beneficiaries were on-duty disability retirees, and the present value of their future benefits was only 2.1% of the present value of future benefits for all the inactive members. For the active members, only 1% of the present value of future benefits was for future on-duty disability benefits. So a small reduction in the present value of future on-duty disability benefits would be a very small reduction in the total present value of future benefits of the System. The firm does not

recommend a change in the actuarial assumption for on-duty disability incidence rates, but will monitor future experience and make a change in these rates if warranted by the experience. In the firm's opinion, the changes that §4 of House Bill 2400 makes to §864.004 and §864.005 will have a very small positive effect on the actuarial condition of the System in the future. However the changes are considered immaterial.

Kevin Deiters, Program Director, has determined that for the first five years that the amended rule is in effect, there would be limited to no cost to state or local governments. There is no anticipated economic impact to small businesses or individuals by the amendment of the rule.

Mr. Deiters has also determined that for each year of the first five year period the amendments are in effect the anticipated public benefit will be to protect the current members of the retirement system while improving the ability of the pension system to pay disability benefits. The members will not be required to apply through the Social Security Administration and due to the statutory changes, will be able to receive disability benefits in a timely manner.

Comments on the proposal may be submitted in writing to Lisa Ivie Miller, Commissioner, Office of the Fire Fighters' Pension Commissioner, P.O. Box 12577, Austin, Texas 78711-2577 no later than August 1, 2007. Comments may also be submitted electronically to rules@ffpc.state.tx.us or faxed to (512) 936-3480.

The rule amendment is proposed under the statutory authority of *Government Code,* §865.006(b) and concerns §864.004 and §864.005.

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

§308.3. Disability Retirement Benefits.

(a) Except as otherwise provided by §864.004 and §864.005 [~~§865.006~~], *Government Code,* and this section, a member whose disability results from performing emergency service duties is entitled to a monthly annuity during the period of the disability in an amount equal to $300 plus $50 for every $12 increase in contributions above $12 by the governing body for which the person was performing emergency service duties at the time of the disability.

(b) An increase in contributions by a governing body after the payment of a monthly annuity begins does not increase the amount of the annuity.

(c) Disability benefits are prorated for portions of months during which a person is disabled.

(d) A local board shall report to the commissioner, in a manner provided by the pension system, a determination of temporary disability not later than the 45th day after the date the disability begins.

[~~(e) A person receiving temporary disability benefits who does not apply to the Social Security Administration for certification as permanently disabled before the second anniversary of the date of determination of temporary disability or, if the person does not participate in the social security program, to a medical board selected by the state board for alternative certification is subject to termination of disability benefit payments if the person is not certified by the Social Security Administration or the medical board within the period provided by §864.004, Government Code.~~]

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702515
Kevin Deiters
Policy Director
Office of the Fire Fighters' Pension Commissioner
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 463-9935

♦ ♦ ♦

34 TAC §308.4

The State Board of Trustees of the Texas Emergency Services Retirement System proposes to amend 34 *Texas Administrative Code* §308.4, relating to death benefit payments for surviving spouses of deceased members of the Texas Emergency Services Retirement System (System).

The proposed amendment expands the rule relating to death benefits for the surviving spouse of a deceased member who dies as an active member of a participating department before retirement but after meeting the minimum age and service requirements for service retirement. The rule amendment provides for entitlement to two-thirds of the monthly annuity that the decedent would have received if the decedent had retired on the date of death. The rule amendment replaces what was in prior statute with language that is consistent with changes to the statute made in 2007. The amendment provides that a surviving spouse of a deceased member who dies after terminating service with all participating departments and after meeting a service retirement requirement under *Government Code,* §864.001 and related board rules, but before attaining the age of 55 is entitled to a death benefit annuity, beginning as provided by that section, equal to two-thirds of the monthly annuity to which the decedent would have been entitled to if the decedent had retired on the date of death. Amendments to *Government Code,* §864.007 and §864.008 which were enacted by House Bill 2400, 80th Regular Legislative Session, and which go into effect September 1, 2007, provide for clear distribution of benefits through the rulemaking process rather than through statute to allow the State Board of Trustees the ability to make additions or changes relating to distribution.

There is no actuarial impact on the System relating to this rule amendment as determined by the firm of Rudd and Wisdom, Inc.

Kevin Deiters, Program Director, has determined that for the first five years that the amended rule is in effect, there would be limited to no cost to state or local governments. There is no anticipated economic impact to small businesses or individuals by the amendment of the rule.

Mr. Deiters has also determined that for each year of the first five year period the amendments are in effect the anticipated public benefit as a result of the adoption of the amendments will be to provide participating departments with improved benefits to recruit volunteer fire fighters and emergency services personnel to protect local communities.

Comments on the proposal may be submitted in writing to Lisa Ivie Miller, Commissioner, Office of the Fire Fighters' Pension Commissioner, P.O. Box 12577, Austin, Texas 78711-2577 no later than August 1, 2007. Comments may also be submitted electronically to rules@ffpc.state.tx.us or faxed to (512) 936-3480.

The rule amendment is proposed under the statutory authority of *Government Code,* §865.006(b) and concerns §864.007 and §864.008.

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

§308.4. Death Benefits.

(a) The beneficiary of a member who dies as a result of performing emergency service duties is entitled to a lump-sum benefit of $60,000.

(b) The beneficiary of a deceased member whose death did not result from the performance of emergency service duties, including a member whose death resulted from the performance of active military duty, is entitled to the greater of:

(1) the amount contributed to the fund on the decedent's behalf; or

(2) the sum that would have been contributed on the decedent's behalf from whatever source at the end of the period required for full service retirement benefits.

(c) The surviving spouse of a deceased member who dies as an active member of a participating department before retirement but after meeting the minimum age and service requirements for service retirement is entitled to two-thirds of the monthly annuity that the decedent would have received if the decedent had retired on the date of death.

(d) The surviving spouse of a deceased member who dies after terminating service with all participating departments and after meeting a service requirement under §864.001, *Government Code,* but before attaining the age of 55, is entitled to a death benefit annuity, beginning on the date on which the decedent would have turned 55, equal to two-thirds of the monthly annuity to which the decedent would have been entitled on that date.

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702517
Kevin Deiters
Policy Director
Office of the Fire Fighters' Pension Commissioner
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 463-9935

♦ ♦ ♦

CHAPTER 310. ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §310.10

The State Board of Trustees of the Texas Emergency Services Retirement System proposes to amend 34 *Texas Administrative Code* by adding §310.10, relating to voluntary payments by member departments in the Texas Emergency Services Retirement System (System).

The proposed new rule authorizes and provides the conditions necessary for participating departments to provide supplemental payments to annuitants of the department. The department may provide for a permanent increase or a one time increase in the annuity, but the increase must apply to all of the annuitants in the same classification and may be based on persons who qualified for an annuity under a previously lower contribution rate.

Government Code, §864.0135 as enacted by House Bill 2400, 80th Legislature, Regular Session, 2007 allows the board, by rule, to authorize a participating department to make either one or more supplemental payments, such as a 13th payment in a 12 month period, or to increase monthly benefits payable to retirees and beneficiaries. The statute requires the electing participating department to fund these additional benefits. The method used by the department would be described in a contractual agreement between the Office of the Fire Fighters' Pension Commissioner, the participating department, and the governing entity.

There is no actuarial impact on the System relating to this new rule as determined by the firm of Rudd and Wisdom, Inc.

Kevin Deiters, Program Director, has determined that for the first five years that the new rule is in effect, there would be limited costs to state or local governments because the rule is permissive. There is no anticipated economic impact to small businesses. Individuals who are annuitants of the system whose department chooses to make these additional payments could see a personal positive economic impact by the adoption of the new rule.

Mr. Deiters has also determined that for each year of the first five year period the rule is in effect the anticipated public benefit as a result of the adoption of the new rule will be to provide improved benefits for the annuitants of the participating departments.

Comments on the proposal may be submitted in writing to Lisa Ivie Miller, Commissioner, Office of the Fire Fighters' Pension Commissioner, P.O. Box 12577, Austin, Texas 78711-2577 no later than August 1, 2007. Comments may also be submitted electronically to rules@ffpc.state.tx.us or faxed to (512) 936-3480.

The new rule is proposed under the statutory authority of *Government Code,* §865.006(b) and concerns §864.0135.

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

§310.10. Voluntary Payments by Departments.

(a) A participating department may make one or more supplemental payments to retirees and other beneficiaries of the pension system, or may provide an increase in the amount of annuities paid to retirees and other beneficiaries of the system, contingent upon the following conditions of this section.

(b) A participating department must meet the following conditions before a supplemental payment or increase in annuity to retirees or beneficiaries is implemented:

(1) A participating department shall make payments to the system that are necessary to finance one or more supplemental payments to retirees or beneficiaries of the department.

(2) A participating department shall make payments to the system to finance an increase in annuities paid to annuitants of the department. The increase must apply to all annuitants in the same classification but may be based on persons who qualified for an annuity under a previously lower contribution rate.

(3) Payments to the system may not be made under this section unless the system's actuary first determines that the payments to the system will be sufficient to finance the anticipated additional benefits.

(4) The department must enter into a contractual agreement as prescribed by the Office of the Firefighters' Pension Commissioner.

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702518
Kevin Deiters
Policy Director
Office of the Fire Fighters' Pension Commissioner
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 463-9935

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER W. LEVEL-OF-CARE SERVICE SYSTEM

DIVISION 5. INTENSIVE PSYCHIATRIC TRANSITION PROGRAM

40 TAC §§700.2381, 700.2383, 700.2385

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Family and Protective Services (DFPS), new §§700.2381, 700.2383, 700.2385, concerning the Intensive Psychiatric Transition Program, in its Child Protective Services (CPS) chapter. DFPS received funding in House Bill 1 in the 80th session for an exceptional item that was part of the department's Legislative Appropriations Request (LAR) to implement a time limited, post-hospitalization "step-down" rate to support the transition of children in DFPS conservatorship who have experienced or are likely to experience multiple inpatient admissions in a psychiatric hospital to an appropriate placement. HHSC is concurrently proposing an amendment to the Texas Administrative Code, 1 TAC §355.7103, Rate-Setting Methodology for 24-Hour Residential Child Care Reimbursements to accommodate this new program.

The proposed rules implement the Intensive Psychiatric Transition program. Section 700.2381 provides an overview of the Intensive Psychiatric Transition program, which provides a short-term placement option as an alternative to psychiatric hospitalization or after release from a psychiatric hospital. Section 700.2383 establishes the eligibility criteria for the program, which require that a child (1) be in DFPS conservatorship for the last 90 days; (2) have had three psychiatric hospitalizations in the last 12 months; and (3) be ready for discharge from a psychiatric hospital or at risk of a fourth hospitalization. Section 700.2385 establishes the limit for placement in this program, which is 60 days with a possible extension for an additional 60 days.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government for the first five-year period that the sections will be in effect is estimated to cost $3,869,514 for fiscal year 2008; $4,179,075 in fiscal year 2009; $4,513,401 in fiscal year 2010; $4,874,473 in fiscal year 2011; and $5,264,431 in fiscal year 2012. There will be no fiscal implications for local government.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that a psychiatric transition program will be available for children with extreme behaviors and histories of multiple inpatient psychiatric care episodes to assist them in transitioning into less restrictive placements. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed new sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Beth Engelking at (512) 438-3376 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-368, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement House Bill 1, 80th Session.

§700.2381. What is the Intensive Psychiatric Transition program?

The Intensive Psychiatric Transition program offers a short-term mental health treatment and placement option for children in DFPS conservatorship with acute, intensive psychiatric needs at the time of release from a psychiatric hospitalization or as an alternative to a psychiatric hospitalization. The purpose is to provide enriched services and supports to stabilize children and youth and promote successful transitions to less restrictive placements.

§700.2383. Who is eligible for the Intensive Psychiatric Transition program?

To be eligible for this program, a child must:

(1) have been in DFPS conservatorship for the last 90 days;

(2) have had at least three psychiatric hospitalizations in the preceding 12 months; and

(3) either be ready for discharge from a psychiatric hospital or at imminent risk of a fourth psychiatric hospitalization.

§700.2385. How long may a child be placed in the Intensive Psychiatric Transition program?

All placements in this program are limited to 60 days, unless the Assistant Commissioner of CPS grants a one-time, child-specific waiver for an additional 60 days.

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702494
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: July 29, 2007
For further information, please call: (512) 438-3437

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 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 25. PREPAID FUNERAL CONTRACTS

SUBCHAPTER B. REGULATION OF LICENSES

7 TAC §25.10

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (department), withdraws the proposed amendments to §25.10 previously published in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10473).

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702461
Sarah J. Shirley
General Counsel
Texas Department of Banking
Effective date: June 15, 2007
For further information, please call: (512) 475-1300

♦ ♦ ♦

TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 303. REGISTRATION

SUBCHAPTER A. REGISTRATION OF BUILDERS

10 TAC §303.19

The Texas Residential Construction Commission withdraws the proposed amendments to §303.19 which appeared in the February 23, 2007, issue of the *Texas Register* (32 TexReg 692).

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702479
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Effective date: June 15, 2007
For further information, please call: (512) 463-2886

♦ ♦ ♦

SUBCHAPTER B. REGISTRATION OF HOMES

10 TAC §303.140

The Texas Residential Construction Commission withdraws the proposed amendments to §303.140 which appeared in the February 23, 2007, issue of the *Texas Register* (32 TexReg 693).

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702478
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Effective date: June 15, 2007
For further information, please call: (512) 463-2886

♦ ♦ ♦

CHAPTER 305. PRACTICE AND PROCEDURES FOR HEARINGS AND DISCIPLINARY ACTIONS

SUBCHAPTER B. DISCIPLINARY PROCEEDINGS

10 TAC §305.21

The Texas Residential Construction Commission withdraws the proposed amendments to §305.21 which appeared in the February 23, 2007, issue of the *Texas Register* (32 TexReg 696).

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702477
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Effective date: June 15, 2007
For further information, please call: (512) 463-2886

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 161. GENERAL PROVISIONS

22 TAC §161.3

The Texas Medical Board withdraws the proposed amendment to §161.3 which appeared in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2438). Elsewhere in this issue of the *Texas*

Register, the Texas Medical Board re-proposes an amendment to §161.3.

Filed with the Office of the Secretary of State on June 13, 2007.

TRD-200702381

Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Effective date: June 13, 2007
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 the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 3. STATE BANK REGULATION

SUBCHAPTER B. GENERAL

7 TAC §3.37

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts an amendment to §3.37, concerning the calculation of annual assessment for banks. The amendment is adopted without changes to the proposed text as published in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2436). The text will not be republished.

Until recently, both state and federal law permitted a well-managed and well-capitalized bank with total assets less than $250 million to be examined under an extended 18-month examination cycle, subject to supervisory discretion to conduct an examination more frequently if warranted. The recently enacted Financial Services Regulatory Relief Act of 2006 increased the total asset threshold to $500 million from $250 million for federal examination purposes, effectively allowing more banks to qualify for the extended 18-month examination cycle under federal law.

The department has taken steps to similarly change the state examination cycle to enable continued, coordinated examinations with federal agencies.

Section 3.37 specifies the assessment rates governing the calculation and payment of fees that the department is authorized to recover for maintaining and operating the department and enforcing applicable provisions of the Finance Code. The strategy underlying bank assessments in §3.37 is risk-based. Well-managed and well-capitalized banks with total assets of less than $250 million that qualify for the 18-month examination cycle currently receive a discount on assessments. A well-managed and well-capitalized bank with total assets of $250 - $500 million that now qualifies for the 18-month examination cycle should also receive a discount on assessments. The adopted amendment to the table in Figure: 7 TAC §3.37 reduces the assessment rate multiplier for these banks from 100% to 87.5%.

The commission received no comments regarding the adopted proposal.

The amendment is adopted pursuant to Finance Code, §§11.301, 31.003(a)(4), and 31.106, which authorize the commission to adopt rules necessary or reasonable to recover the cost of supervision and regulation by imposing and collecting ratable and equitable fees.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702453
Sarah J. Shirley
General Counsel
Finance Commission of Texas
Effective date: July 5, 2007
Proposal publication date: May 4, 2007
For further information, please call: (512) 475-1300

♦ ♦ ♦

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 15. CORPORATE ACTIVITIES

SUBCHAPTER C. BANK OFFICES

7 TAC §15.43

The Finance Commission of Texas (commission) adopts new §15.43, concerning establishment and operation of a remote service unit. New §15.43 is adopted without changes to the proposed text as published in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2437). The text will not be republished.

The Texas Department of Banking issued Opinion No. 07-01 on February 20, 2007, concluding that a remote service unit is not a "branch" under Texas law. New §15.43 codifies that opinion.

New §15.43 defines a remote service unit as an automated facility, operated by a customer of a bank, that conducts banking functions such as receiving deposits, paying withdrawals, or lending money. The term includes an unmanned or automated teller machine, automated loan machine, and automated device for receiving deposits, and the device may be equipped with a telephone or video device that allows contact with bank personnel. The section excludes a remote service unit from the definition of "branch" in Finance Code, §31.002(a)(8).

The commission received no comments regarding the proposal.

The new section is adopted under Finance Code, §31.003(a), which authorizes the commission to adopt rules to accomplish the purposes of Finance Code, Title 3, Subtitle A, and Finance Code, §31.002(a)(8)(H), which authorizes the commission to adopt rules exempting a banking facility from the definition of "branch." As required by §31.003(b), in adopting the section the finance commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the

competitive position of state banks with regard to national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development in this state.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702460
Sarah J. Shirley
General Counsel
Texas Department of Banking
Effective date: July 5, 2007
Proposal publication date: May 4, 2007
For further information, please call: (512) 475-1300

♦ ♦ ♦

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER E. DIRECTION OF AFFAIRS

7 TAC §91.501

The Credit Union Commission adopts amendments to §91.501, concerning Eligibility to Hold Office, with non-substantive changes to the proposed text as published in the March 2, 2007, issue of the *Texas Register* (32 TexReg 1005).

The adopted amendments to §91.501 change the title of the section to "Director Eligibility and Disqualification;" clarify eligibility requirements for serving on the Board of Directors; allow a credit union to develop its own standard application for candidates seeking or appointed to director positions with review by the commissioner; direct each credit union to establish continuing education requirements for its directors; and delineate conduct that is prohibited for persons serving on the Board.

The amendments are adopted as a result of the Department's general rule review.

A public hearing on the amendments was held at the Department offices on May 18, 2007 at 8:15 a.m. No oral comments were received at that hearing.

Written comments were received from John Lederer with Credit Union of Texas, from Suzanne Yashewski with the Texas Credit Union League, and from Karen Wilkerson with United Heritage Credit Union. In addition, oral comments were received from Melodie Stegall with the Credit Union Legislative Coalition and from Suzanne Yashewski with the Texas Credit Union League at a public hearing at the Department offices on January 19, 2007.

Two comments concerned the added language on default in subsection (b)(4). Both noted that, under many loan agreements, even one late payment could constitute default. While the proposed additional language is identical to the statute, the Commission has revised the amendment to clarify that a director may not be more than 90 days delinquent on an obligation to the credit union.

Two other comments focused on the new subsection (b)(7) requiring that a director complete and return an application before being elected or before serving. The commenters felt that this amendment could be interpreted to preclude elections from the floor. In response, the Commission has added language incorporating the requirement of subsection (c), which allows 30 days to complete an application where the board member was not nominated by the nominating committee prior to the annual meeting.

Another commenter felt that requiring a director to take an oath of office could be discriminatory. As this is a statutory requirement under §122.053(c), the Commission cannot waive it, but notes that both the rule and the statute allow a director to take and subscribe to an affirmation of office as well. The Commission declines to amend the rule.

Finally, a commenter expressed concern with the amendment to subsection (c) which would allow credit unions to prescribe the director application form. The commenter felt that it would be possible for a credit union to design an application that could discourage certain classes of members from seeking election to the board. In response to this concern, the Commission has retained the commissioner's ability to review any form and to require that changes be made if the application is deemed to be inadequate or discriminatory.

The amended rule is adopted under §15.402 of the Texas Finance Code, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code, §122.054, which directs the Commission to establish qualifications for a director.

The specific section affected by the adopted rule amendments is Texas Finance Code, §122.054.

§91.501. Director Eligibility and Disqualification.

(a) Elective office. No credit union shall adopt or amend its articles of incorporation or bylaws to designate or reserve one or more places on the board of directors for any member representative of any classification that restricts or infringes upon the equal rights of all members to vote for, or seek any position on, the board of directors of the credit union.

(b) Qualifications. No member may be elected to or serve on the board of directors if that member:

(1) has been convicted of any criminal offense involving dishonesty or breach of trust;

(2) is not eligible for coverage by the blanket bond required under the provisions of the Act, or §91.510 of this title (relating to Bond and Insurance Requirements);

(3) has had a final judgment entered against him/her in a civil action upon the grounds of fraud, deceit, or misrepresentation;

(4) has a payment on a voluntary obligation to the credit union that is more than 90 days delinquent or has otherwise caused the credit union to suffer a financial loss;

(5) has been removed from office by any regulatory or government agency as an officer, agent, employee, consultant or representative of any financial institution;

(6) has been personally made subject to an operating directive for cause while serving as an officer, director, or senior executive management person of a financial institution; or has caused or participated in a prohibited activity or an unsafe or unsound condition at a

financial institution which resulted in the suspension or revocation of the financial institution's certificate of incorporation, or authority or license to do business;

(7) has failed to complete and return a director application in accordance with subsection (c) of this section; or

(8) refuses to take and subscribe to the prescribed oath or affirmation of office.

(c) Director application. Any member nominated for, or seeking election to, the board of directors shall submit a written application in such form as the credit union may prescribe. The application shall be submitted either to the nominating committee prior to its selection of nominees; or to the board chair within 30 days following the election of a member who was not nominated by the nominating committee or who was appointed by the board to fill a vacancy. The applications of the elected/appointed directors shall be incorporated into and made part of the minutes of the first board meeting following the election/appointment of those directors. Applications of unsuccessful candidates shall be destroyed or returned upon request. The commissioner may review and require that changes be made to any application form, which is deemed inadequate or unfairly discriminates against certain classes of members.

(d) Director education. Directors must develop and maintain a fundamental, ongoing knowledge of the regulations and issues affecting credit union operations to assure a safe and sound institution. A credit union shall, by written board policy, establish appropriate education requirements and provide sufficient resources for elected officials to achieve and maintain professional competence. The policy should be appropriate to the size and financial condition of the credit union and the nature and scope of its operations.

(e) Prohibited conduct. A director shall not:

(1) Divulge or make use of, except in the performance of office duties, any fact, information, or document not generally available to the membership that is acquired by virtue of serving on the board of the credit union.

(2) Use the director's position to obtain or attempt to obtain special advantage or favoritism for the director, any relative of the director, or any person residing in the director's household.

(3) Accept, directly or indirectly, any gift, fee, or other present that is offered or could be reasonably be viewed as being offered to influence official action or to obtain information that the director has access to by reason of serving on the board of the credit union.

(f) Recall of director. The members of a credit union may remove a director by a vote of two-thirds of those members voting at any special or regular meeting of the members; provided, however, that:

(1) the members voting shall constitute not less than 10% of the membership eligible to vote in the recall election;

(2) all members are given at least 30 days notice of the meeting which shall state the reasons why the meeting has been called; and

(3) the affected director is afforded an opportunity to be heard at such meeting prior to a vote on removal.

(g) Absences. The office of a director becomes vacant upon the convening of a regular board meeting, when a director fails to attend three (3) consecutive regular meetings without due cause, or when a director fails to attend six (6) regular meetings within any twelve-month period following the director's election or appointment. A new individual shall be appointed to fill any vacancies occurring in this manner within sixty days, unless extended by approval of the commissioner.

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702490
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: July 8, 2007
Proposal publication date: March 2, 2007
For further information, please call: (512) 837-9236

♦ ♦ ♦

7 TAC §91.502

The Credit Union Commission adopts amendments to §91.502, concerning director fees and expenses, without changes to the proposed text as published in the March 2, 2007, issue of the *Texas Register* (32 TexReg 1006).

The adopted amendments define more specifically the limitations on the payment of fees to directors or committee members, clarify that fees may be paid to committee members, and add a new subsection for providing insurance to directors or committee members.

The amendments are adopted as a result of the Department's general rule review.

A public hearing on the amendments was held at the Department offices on May 18, 2007 at 8:15 a.m. No oral comments were received.

Written comments in support of the amendments were received from Karen Wilkerson with United Heritage Credit Union. The commenter urged the Commission to adopt the amendments as presented.

The amendments are adopted under §15.402 of the Texas Finance Code, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §122.062, which limits the compensation a director may receive for services.

The specific section affected by the adopted rule amendments is Texas Finance Code, §122.062.

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702492
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: July 8, 2007
Proposal publication date: March 2, 2007
For further information, please call: (512) 837-9236

♦ ♦ ♦

7 TAC §91.510

The Credit Union Commission adopts amendments to §91.510, concerning fidelity bond and insurance requirements, with non-substantive changes to the proposed text as published in the March 2, 2007, issue of the *Texas Register* (32 TexReg 1007).

The amendments remove the minimum coverage and maximum deductible requirements and place responsibility for determining those amounts on the credit union, subject to review by the board of directors. The amendments also make clear that failure to comply with NCUA's fidelity bond requirements could be deemed an unsafe practice under Texas Finance Code §122.255.

The amendments are adopted as a result of the Department's general rule review.

A public hearing on the amendments was held at the Department offices on May 18, 2007, at 8:15 a.m. No oral comments were received.

Written comments were received from Karen Wilkerson with United Heritage Credit Union and from John Lederer with Credit Union of Texas. One commenter supported the amendments and urged the Commission to adopt them as proposed. Another commenter suggested eliminating the term "management" in subsection (a)(1) to clarify that the responsibility for determining the amount of bond coverage resides in both the management and the board. The change has been made as suggested. The commenter also noted a typographical error in subsection (f) which has been corrected.

The amendments are adopted under §15.402 of the Texas Finance Code, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §122.063, which requires a credit union to provide surety or security bonds for directors, officers, and employees.

The specific section affected by the amended rule is Texas Finance Code §122.063.

§91.510. Bond and Insurance Requirements.

(a) Fidelity bond. Each credit union shall purchase and maintain a blanket fidelity bond covering the officers, directors, employees, committee members, and its agents, against loss caused by dishonesty, burglary, robbery, larceny, theft, holdup, forgery or alteration of instruments, misplacement or mysterious disappearance. All carriers writing credit union blanket bonds must be authorized by the Insurance Commissioner for the state of Texas as an acceptable fidelity on bonds in this state.

(1) Subject to approval by the credit union's board of directors, the amount of coverage to be required for each credit union shall be determined by the credit union, based on its assessment of the level that would be safe and sound in view of the credit union's potential exposure to risk.

(2) Each credit union may maintain bond coverage in addition to that provided by the insurance underwriter industry's standard forms, through the use of endorsements, riders, or other forms of supplemental coverage, if, in the judgment of the credit union's board of directors, additional coverage is warranted.

(3) The commissioner may require additional coverage of any credit union when, in his opinion, the fidelity bond in force is insufficient to provide adequate fidelity coverage. It shall be the duty of the board of directors to obtain the additional coverage within 30 days after the date of written notice of the findings by the commissioner.

(b) Cancellation. A fidelity bond must include a provision requiring written notification by the fidelity to the commissioner prior to cancellation of any or all coverages set out in the bond which includes a brief statement of cause for termination.

(c) Other insurance. Each credit union shall, subject to approval by the board, purchase appropriate insurance coverages to insure the credit union and its assets against loss or damage by fire, liability, casualty or any other insurance risks.

(d) Board review. The board of directors of each credit union shall formally approve the credit union's bond and insurance coverages. In deciding whether to approve the coverages, the board shall review the adequacy of the standard coverage and the need for supplemental coverage. Documentation of the board's approval shall be included as part of the minutes of the meeting at which the board approves coverages. Additionally, the board of directors shall review the credit union's bond and insurance coverages at least annually to assess the continuing adequacy of coverage.

(e) Review by fidelity company. Credit unions which are analyzed by a fidelity company shall notify the commissioner of the analysis within 30 days of the review commencement. The report of the review is to be provided to the commissioner upon request. The confidentiality of the report shall be preserved in the same manner afforded a report of examination conducted by the department.

(f) Insuring organization's bond requirements. A credit union shall also comply with all bond requirements imposed by an insuring organization as a condition to maintain insurance on share and deposit accounts. Any credit union that fails to meet the minimum fidelity bond specifications contained within Part 741.201 of the NCUA Rules and Regulations may be deemed to be engaged in an unsafe practice pursuant to Finance Code §122.255.

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702489
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: July 8, 2007
Proposal publication date: March 2, 2007
For further information, please call: (512) 837-9236

♦ ♦ ♦

7 TAC §91.516

The Credit Union Commission adopts amendments to §91.516, concerning audits and verifications, with non-substantive changes to the proposed text as published in the March 2, 2007, issue of the *Texas Register* (32 TexReg 1008).

The adopted amendments clarify the timing and conditions of audits of credit unions. The amendments also provide that the commissioner can require a credit union to obtain a verification of members' accounts under certain conditions and more clearly define the conditions under which the commissioner can require an opinion audit.

The amendments are adopted as a result of the Department's general rule review.

A public hearing on the amendments was held at the Department offices on May 18, 2007 at 8:15 a.m. No oral comments were received.

Written comments were received from Karen Wilkerson with United Heritage Credit Union and from John Lederer with Credit Union of Texas. One commenter supported the amendments, urging the Commission to adopt them as proposed. Another commenter expressed concern that stating the requirement of an audit in terms of a calendar year could allow a credit union to conduct an audit early in one year and late in another year with two annual meetings intervening. Accurate financial reporting is essential to a credit union's safety and soundness. To help ensure accurate and reliable financial reporting, the Commission believes that each credit union should establish and maintain an auditing program that is performed as of year-end. Since Texas Finance Code, §122.102, requires that a summary of the audit be reported to the members at the next annual meeting, the Commission has reinserted "annual" before "audit" in this section and has reiterated that a summary of the audit be reported at the next annual meeting.

The amendments are adopted under §15.402 of the Texas Finance Code, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code, §122.102 which requires credit unions to observe accounting principles prescribed by the Commission and authorizes the Commission to adopt a rule requiring verification of members' accounts.

The specific section affected by the adopted rule amendments is Texas Finance Code, §122.102.

§91.516. Audits and Verifications.

(a) Audit requirements. At least once every calendar year, the board of directors shall obtain or cause to be performed an annual audit of the credit union which must cover the period elapsed since the last audit period, a summary of which must be reported to the members at the next membership meeting. The audit must be conducted in accordance with generally accepted auditing standards by a licensee of the Texas State Board of Public Accountancy or as permitted under the provisions of part 715 of the National Credit Union Administration's Rules and Regulations (12 CFR, Chapter VII, Part 715).

(b) Definitions.

(1) A record-keeping deficiency is serious if the commissioner reasonably believes that the board of directors and management of the credit union have not timely met financial reporting objectives and established practices and procedures sufficient to safeguard members' assets.

(2) A serious recordkeeping deficiency is persistent when it continues beyond a usual, expected or reasonable period of time.

(c) Verification obligation. The board of directors shall, at least once every two years, cause the share, deposit, and loan accounts to be verified against the records of the credit union as prescribed in §715.8 of the National Credit Union Administration's Rules and Regulations (12 CFR, Chapter VII, Part 715).

(d) Remedies. The commissioner may compel a credit union to obtain an audit and/or a verification of members' accounts, performed by an independent person, for any year in which any of the following three conditions is present:

(1) the credit union has not obtained an annual audit or caused an audit/verification to be performed;

(2) the credit union has obtained an audit/verification or performed an audit/verification which does not meet the specified requirements; or

(3) the credit union has experienced serious and persistent recordkeeping deficiencies.

(e) Opinion audit required. The commissioner may compel a credit union to obtain an opinion audit performed in accordance with Generally Accepted Auditing Standards by an independent person who is licensed by the state for any year in which the credit union has experienced persistent serious recordkeeping deficiencies. The objective of such an audit is to obtain an unqualified opinion on the credit union's financial statements.

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702493
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: July 8, 2007
Proposal publication date: March 2, 2007
For further information, please call: (512) 837-9236

♦ ♦ ♦

SUBCHAPTER F. ACCOUNTS AND SERVICES

7 TAC §91.610

The Credit Union Commission adopts amendments to §91.610, concerning safe deposit box facilities, without changes to the proposed text as published in the March 2, 2007, issue of the *Texas Register* (32 TexReg 1008).

The amendments remove duplicate language and make grammatical and technical corrections to the language of the rule.

The amendments are adopted as a result of the Department's general rule review.

A public hearing on the amendments was held at the Department offices on May 18, 2007, at 8:15 a.m. No oral comments were received.

Written comments in support of the amendments were received from Karen Wilkerson with United Heritage Credit Union. The commenter urged the Commission to adopt the amendments as presented.

The amendments are adopted under §15.402 of the Texas Finance Code, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §125.508, which sets out requirements for key imprinting.

The specific section affected by the amended rule is Texas Finance Code §125.508.

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702488

Harold E. Feeney
Commissioner
Credit Union Department
Effective date: July 8, 2007
Proposal publication date: March 2, 2007
For further information, please call: (512) 837-9236

♦ ♦ ♦

CHAPTER 95. SHARE AND DEPOSITOR INSURANCE PROTECTION
SUBCHAPTER A. INSURANCE REQUIREMENTS

7 TAC §95.110

The Credit Union Commission adopts new §95.110, concerning enforcement, penalty, and appeal, with a non-substantive change to the proposed text as published in the March 2, 2007, issue of the *Texas Register* (32 TexReg 1009). The change corrects a typographical error in subsection (a).

The adopted new rule addresses the actions the commissioner may take in the event the commissioner determines an insuring organization is operating in an unsafe or unsound manner or violating any applicable laws or regulations.

The new rule is adopted as a result of the Department's general rule review and in response to comments from the Texas Department of Insurance.

A public hearing on the new rule was held at the Department offices on May 18, 2007 at 8:15 a.m. No oral comments were received.

One written comment in support of the new rule was received from Karen Wilkerson with United Heritage Credit Union. The commenter urged the Commission to adopt the rule as presented.

The new rule is adopted under §15.402 of the Texas Finance Code, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code, §15.404, which authorizes the commissioner to administer and enforce the statutes and rules, §122.257 which permits the commissioner to issue a cease and desist order, and §122.260, which authorizes the commissioner to assess administrative penalties.

The specific sections affected by the adopted new rule are Texas Finance Code, §§15.404, 122.257, and 122.260.

§95.110. Enforcement; Penalty; and Appeal.

(a) The commissioner may issue a cease and desist order, generally in accordance with Finance Code §122.257(b), (c), (d) and (e), to an officer, employee, director, and/or the insuring organization itself, if the commissioner determines from examination or other credible evidence that the insuring organization has or is operating in an unsafe or unsound manner, or violated or is violating any applicable Texas law or rule of the commission, including causing a credit union to operate in an unsafe or unsound condition as defined by Finance Code §121.002(11)(C). If the insuring organization does not comply with the order, the commissioner may assess an administrative penalty as authorized by Finance Code §122.260, as well as institute procedures to revoke the authority to provide primary share insurance coverage in this state.

(b) An insuring organization may file a notice of appeal of a cease and desist order in accordance with §93.401 of this title (relating to Finality and Request for SOAH Hearing).

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

Filed with the Office of the Secretary of State on June 18, 2007.

TRD-200702491
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: July 8, 2007
Proposal publication date: March 2, 2007
For further information, please call: (512) 837-9236

♦ ♦ ♦

TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 1. LIBRARY DEVELOPMENT
SUBCHAPTER B. STANDARDS FOR ACCREDITATION OF A MAJOR RESOURCE SYSTEM OF LIBRARIES IN THE TEXAS LIBRARY SYSTEM

13 TAC §1.47, §1.67

The Texas State Library and Archives Commission adopts amendments to 13 TAC §1.47 and §1.67, regarding standards for accreditation of a system in the Texas Library System, without changes to the text as published in the April 27, 2007, issue of the *Texas Register* (32 TexReg 2344).

The adopted amendments to §1.47 and §1.67 bring the rules into alignment with the requirements of the program's federal funding source by updating the wording in the rule and moving a section from §1.47 to §1.91 to reflect the Senate Bill 913 directive that system operation grants should fund basic system support services. This language becomes part of adopted amended §1.91 regarding system operation grants.

No comments were received regarding the amended rules.

The amended sections are adopted under the authority of Government Code §441.123 that directs the commission to establish and develop a state library system, and §441.136 that authorizes the director and librarian to propose rules necessary for the administration of the program.

The amended sections affect the Government Code §441.123 and §441.136.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702484

Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: July 5, 2007
Proposal publication date: April 27, 2007
For further information, please call: (512) 463-5459

♦ ♦ ♦

SUBCHAPTER D. GRANTS: SYSTEM OPERATION, INCENTIVE, ESTABLISHMENT, AND EQUALIZATION

13 TAC §1.91, §1.96

The Texas State Library and Archives Commission adopts amended rule 13 TAC §1.91, and new §1.96, regarding system operation grants, with changes to the text as published in the April 27, 2007, issue of the *Texas Register* (32 TexReg 2345).

The adopted amendments to §1.91 move a section from 13 TAC §1.47 to §1.91 to reflect the Senate Bill 913 directive that system operation grants should fund basic system support services. This language becomes part of amended rule §1.91 regarding system operation grants. Basic system support services are defined as administration of the grant, continuing education and consulting. A new rule 13 TAC §1.96 is adopted in response to the Senate Bill 913 provision that removes the funding formula from statute and directs the agency to adopt a formula in rule. The new §1.96 establishes a new formula for system operation grants; this new rule was developed using the process recommended by the Sunset Commission.

Two comments were received from Houston area librarians regarding the new §1.96. A minor editorial change was made to §1.91(b) to clarify the staffing levels mentioned in this section.

The first comment received expressed support for one of the alternative funding formulas that was not the formula recommended by the Library Systems Act Advisory Board. The second comment received expressed concerns that the formula for systems funding is weighted in favor of maintaining many small community libraries, that the agency should be encouraging the development of county or regional libraries, and that larger organizations are generally better funded, better able to negotiate discounted purchases, and better able to support staff education and development, all of which results in better library service to the community. The comment expressed concern that the proposed formula creates a disincentive for small libraries to join together into a county or regional system by counting libraries with multiple locations as only one library, recognizing that the State is responding to small library demands for "their fair share" but not believing this proposed formula is best in the long term.

Agency response: The agency supports the recommendation of the Library Systems Act Advisory Board. The agency generally agrees that the encouragement of larger units of service is desirable and that larger units of service may offer enhanced benefits. However, the agency does not agree that the system operation grant funding formula will have an effect on local decisions to form larger units of service. The basic system support services received by local libraries from the system program would be available to a local library whether or not it was part of a larger unit. Furthermore, any additional benefits received by local libraries from the system program are a very small percentage of local support and in the agency's experience do not affect local decisions to form larger units of service. The agency recognizes that this formula represents a good effort to balance many conflicting demands.

The amendments and new section are adopted under the authority of Government Code §441.123 of the Library Systems Act that directs the commission to establish and develop a state library system, §441.136 that authorizes the director and librarian to propose rules necessary for the administration of the program, and §441.135 that permits the commission to issue system operation grants.

The amendments and new section affect the Government Code §§441.123, 441.135, and 441.136.

§1.91. System Operation Grants.

(a) System operation grants are to provide basic system support services to member libraries, to coordinate and cooperate with the commission and libraries in the region, and to meet commission or federal goals, and to reimburse libraries for providing specialized services. System operation grants are awarded to major resource and regional library systems operating under an approved program of services and budget.

(b) Each major resource or regional library system must, at minimum, apply for funding to provide basic system support services to member libraries. To meet this requirement, each system must apply for the minimum funding necessary for at least one full-time professional librarian and one full-time equivalent support staff. These staff shall be assigned to administration, continuing education, or consulting duties, to meet commission or federal goals; these staff shall be provided with regional travel, communications, and other operating funds to implement the approved program of services. Major resource or regional library systems may also apply for higher levels of funding, as specified in the grant guidelines issued by the commission.

§1.96. System Operation Grant: Formula.

(a) System operation grant funding shall be allocated to meet commission or federal goals. Allocation formula:

(1) 34% of the total amount specified for system operation grants shall be apportioned equally to the major resource and regional library systems;

(2) 33% of the total shall be apportioned on the number of member libraries in a system as compared to the total number of member libraries; the number of member libraries shall be the number of member libraries on the March 1 preceding the beginning of the state fiscal year; and,

(3) 33% of the total shall be apportioned on a per capita basis by the last decennial census or the most recent population estimate of the United States Department of Commerce, Bureau of the Census. The population base for distribution of these funds is the total population residing within the library system boundaries.

(b) In state fiscal year 2009 and later, all library system grants shall be at least $300,000. The grant amounts awarded to library systems by this section may be adjusted by the commission to achieve this minimum grant.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702483

Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: July 5, 2007
Proposal publication date: April 27, 2007
For further information, please call: (512) 463-5459

♦ ♦ ♦

13 TAC §1.96, §1.97

The Texas State Library and Archives Commission (commission) adopts the repeal of 13 TAC §1.96 and §1.97 regarding system operation grants without changes to the proposal as published in the April 27, 2007, issue of the *Texas Register* (32 TexReg 2346).

The Sunset Commission report on the agency and Senate Bill 913 removed the system funding formula from statute and directed the agency to adopt a funding formula in rule. The agency, therefore, adopts the repeal of the existing funding rule and, in a separate action, adopts a new funding rule, 13 TAC §1.96. 13 TAC §1.97 is no longer needed. The provisions of this rule are covered in existing state grant standards and by contract.

No comments were received regarding the repeal of the rules.

The repeal is adopted under the authority of Government Code, §441.136, of the Library Systems Act that authorizes the director and librarian to propose rules necessary for the administration of the program and §441.135 that permits the commission to issue system operation grants.

The adopted repeal affects the Government Code, §441.135 and §441.136.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702482
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: July 5, 2007
Proposal publication date: April 27, 2007
For further information, please call: (512) 463-5459

♦ ♦ ♦

CHAPTER 2. GENERAL POLICIES AND PROCEDURES

SUBCHAPTER C. GRANT POLICIES

DIVISION 8. LOAN STAR LIBRARIES GRANT PROGRAM, GUIDELINES FOR PUBLIC LIBRARIES

13 TAC §2.814

The Texas State Library and Archives Commission (commission) adopts the amendment to 13 TAC §2.814, regarding funding formula for the Loan Star Libraries Grant Program without changes to the proposed text as published in the April 27, 2007, issue of the *Texas Register* (32 TexReg 2346).

This amended rule, as adopted, revises the funding formula for distribution of grant funds to Texas public libraries through the Loan Star Libraries program, whose general purpose is to assist local governments to improve their library services. Grants will aid local communities to maintain, improve, and enhance local library services and will provide Texans who are not residents of a particular local community access to and services from the many participating public libraries. The funding formula was revised through a participatory process to meet library funding needs under a new funding pattern the agency is instituting for the next biennium.

No comments were received regarding the amended rule.

The amended rule is adopted under the authority of Government Code, §441.0091, concerning the Grant Program for Local Libraries, that provides the commission authority to award grants to meet specific information needs of residents and specific needs of local libraries, and to adopt rules for awarding grants.

The adopted amendments affect Government Code, §441.0091.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702480
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: July 5, 2007
Proposal publication date: April 27, 2007
For further information, please call: (512) 463-5457

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 66. REGISTRATION OF PROPERTY TAX CONSULTANTS

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to existing rules at 16 Texas Administrative Code, ("TAC") §§66.10, 66.20, 66.23, 66.25, 66.70, and 66.90; and the repeal of §66.61 regarding the property tax consultants program as published in the April 13, 2007, issue of the *Texas Register* (32 TexReg 2083), without changes from the rule as proposed and will not be republished.

The adopted rules are mostly non-substantive, clean-up changes, such as updating legal citations and other references, deleting redundant provisions, and rearranging provisions for better organization. In addition to those non-substantive changes, the rule adoption adjusts the continuing education requirements for registered property tax consultants. The adoption also requires that registrants provide the Department's contact information for consumers on all written contracts.

In §66.10 the definition of "cheating" is deleted because the Department now has a comprehensive examination cheating rule in 16 TAC §60.63, which applies to all Department programs in-

cluding property tax consultants. The definition of "professional designation" is changed to refer to the Institute for Professionals in Taxation, which is the current name for that organization. The definition of "real estate property tax consultant" is updated to make the definition consistent with how the term is used in the rules. The definition now expressly includes real estate brokers, salespersons, and appraisers who are registered under Texas Occupations Code, §1152.155(b). Language is removed that does not apply to all real estate property tax consultants.

The amendments to §66.20 delete provisions that are covered in statute or elsewhere in the Department's rules and the examination passing score provision is moved from §66.61, which is being repealed. The heading of §66.23 and subsection (a) are reworded to be more consistent with the language of Chapter 51, Occupations Code, which is the Department's statutory authority for issuing licenses by endorsement.

In §66.25, the breakdown of continuing education hours in subsection (b) is changed to require an additional one hour of instruction in property tax consultant law and rules and one less hour of instruction in general property tax consultant topics. To be more consistent with the statute, subsection (b) clarifies that the breakdown of hours does not apply to real estate courses that the Department is required to recognize for continuing education credit. For this same reason, the last sentence in subsection (g) is deleted. Language is added to subsection (d) to clarify that a registrant may not receive credit for attending the same course more than once during the one-year period for which the course is approved.

Section 66.61 is repealed. The examination cheating provision is deleted because this matter is addressed in 16 TAC §60.63. Section 66.70(b) is updated with specific Department contact information that a registrant must provide to consumers on all written contracts. The option to post the Department information on a sign at the registrant's place of business is deleted. The Department believes that providing the Department's contact information in all contracts will be more beneficial to consumers because a consumer may not actually visit a registrant's place of business. In §66.90 an unnecessary rule reference is deleted.

The Council recommended these rule changes at their meeting held March 2, 2007. The proposed amendments and repeal were published in the*Texas Register* on April 13, 2007. The comment period closed on May 14, 2007. No public comments were received.

16 TAC §§66.10, 66.20, 66.23, 66.25, 66.70, 66.90

The amendments adopted under Texas Occupations Code, Chapter 1152 and Chapter 51 which authorize the Department to adopt rules as necessary to implement those chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 1152 and Chapter 51. No other statutes, articles, or codes are affected by the adoption.

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

Filed with the Office of the Secretary of State on June 11, 2007.

TRD-200702367

William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: July 1, 2007
Proposal publication date: April 13, 2007
For further information, please call: (512) 463-7348

♦ ♦ ♦

16 TAC §66.61

The repeal is adopted under Texas Occupations Code, Chapter 1152 and Chapter 51 which authorize the Commission to adopt rules as necessary to implement those chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapter 1152 and Chapter 51. No other statutes, articles, or codes are affected by the adoption.

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

Filed with the Office of the Secretary of State on June 11, 2007.

TRD-200702368
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: July 1, 2007
Proposal publication date: April 13, 2007
For further information, please call: (512) 463-7348

♦ ♦ ♦

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS SUBCHAPTER GG. COMMISSIONER'S RULES CONCERNING EARLY COLLEGE EDUCATION PROGRAM

19 TAC §102.1091

The Texas Education Agency (TEA) adopts new §102.1091, concerning the early college high school program. The new section is adopted with changes to the proposed text as published in the February 23, 2007, issue of the *Texas Register* (32 TexReg 706). The adopted new section establishes the procedures through which a campus may attain designation as an Early College High School (ECHS).

Texas Education Code (TEC), §29.908, added by the 78th Texas Legislature, 2003, authorized the commissioner of education to establish and administer a middle college education pilot program for students who are at risk of dropping out of school or who wish to accelerate high school completion. The pilot program was to provide for a course of study that enabled a participating student to combine high school courses and college-level courses during Grades 11 and 12. Through the pilot program, a participating student could complete high school and receive a high school diploma and an associate degree.

Senate Bill 1146, 79th Texas Legislature, Regular Session, 2005, amended the TEC, §29.908, establishing the early college education program for students who are at risk of dropping out of school or who wish to accelerate completion of the high school program. Rider 59 of Senate Bill 1, also passed by the 79th Texas Legislature, Regular Session, 2005, authorizes the use of funds for programs that show the most potential to improve high school. The early college education program is to provide for a course of study that enables a participating student to combine high school courses and college-level courses during Grades 9-12. On or before the fifth anniversary of a student's first day of high school, a participating student must be able to receive both a high school diploma and either an associate degree or at least 60 credit hours toward a baccalaureate degree. TEC, §29.908, authorizes the commissioner to adopt rules as necessary to establish the early college education program.

In accordance with the TEC, §29.908, new Chapter 102, Educational Programs, Subchapter GG, Commissioner's Rules Concerning Early College Education Program, §102.1091, Early College High Schools, establishes the requirements necessary for a school to be designated as an ECHS. The rule includes definitions and provisions relating to: application for and notification of designation as an ECHS, conditions of program operation, programs available to ECHS designees, evaluation of programs, and renewal or revocation of authority.

In response to public comment, the rule was modified since published as proposed. Subsection (d)(3), relating to conditions of ECHS program operation, was modified to specify that when a student takes a course for high school graduation credit, the school district or charter in which a student is enrolled is responsible to pay for tuition, fees, and textbooks related to an ECHS course, to the extent that these costs are not waived by the institution of higher education.

Following is a summary of public comments received and corresponding agency responses regarding proposed new 19 TAC Chapter 102, Educational Programs, Subchapter GG, Commissioner's Rules Concerning Early College Education Program, §102.1091, Early College High Schools.

Application for Approval as an ECHS

Comment. The Texas Classroom Teachers Association commented that each district should be required to include evidence of input by the campus site-based decision-making committee, in accordance with TEC, §11.253(e), as part of the application for approval as an ECHS.

Agency Response. The agency disagrees. When a district opens an ECHS campus, the district is responsible for applying for ECHS designation on behalf of that campus. TEA recognizes that it is possible that opening an ECHS may require changes to a campus improvement plan. However, this is considered to be part of an overall decision-making process within a district. Districts are expected to comply with laws and requirements, including those in TEC, §11.253, Campus Planning and Site-Based Decision-Making. Including a requirement in ECHS rules about the participation of a campus-level committee would require TEA to monitor local compliance with TEC, §11.253, through the ECHS designation process.

Location of ECHS

Comment. A parent expressed support for the ECHS program but commented that it discriminates against students in small districts where an ECHS program is not available.

Agency Response. The agency disagrees. ECHS grants were awarded by TEA to eight school districts, charters, and higher education entities through a competitive grant process. ECHS programs will serve as demonstration sites whose work can be replicated in districts across the state. ECHS programs require that districts and higher education partners work closely to articulate courses, create memoranda of understanding, and design programs that allow students to transition from high school to college. The best practices and lessons learned by ECHS programs will be shared with other districts and higher education institutions seeking to open an ECHS or to initiate or expand a dual credit program.

Allow Concurrent Enrollment to All Students

Comment. A representative from Hereford Independent School District (ISD) commented that students should be allowed to participate in a concurrent enrollment option without being enrolled in a designated Early College High School.

Agency Response. The agency agrees and offers the following clarification. ECHS programs allow participating students to earn both a high school diploma and either an associate degree or 60 credit hours toward a baccalaureate degree. ECHS programs are not designed to replace dual or concurrent enrollment options.

Type of Students Served

Comment. The principal of Collegiate High School with the College of the Mainland commented that first generation college students should be included in the types of students served by an ECHS.

Agency Response. The agency agrees and offers the following clarification. TEC, §29.908, states that the Early College program is "for students who are at risk of dropping out of school or who wish to accelerate completion of the high school program." The agency interprets this language to include first-generation college students.

Cost of ECHS

Comment. The principal of Collegiate High School with the College of the Mainland and a representative of Santa Fe ISD each commented that significant fiscal implications to school districts and institutions of higher education will result from not charging students for tuition, fees, or required textbooks.

Agency Response. The agency disagrees and offers the following clarification. Each school district collects average daily attendance funds for students enrolled in a public school. In an ECHS, when a student attends a higher education course he or she also generates contact hours for a higher education institution. According to TEC, §29.908: "A student participating in the program is entitled to the benefits of the Foundation School Program in proportion to the amount of time spent by the student on high school courses, in accordance with rules adopted by the commissioner, while completing the course of study established by the applicable articulation agreement under subsection (b)(3)."

The new rule is not intended to require either a high school or its partnering higher education institution to bear the full cost of tuition and fees. Instead, it is designed to prevent a student enrolled in a public school from being charged for courses to which they are entitled. In order to clarify the agency's intent, subsection (d)(3) was modified to specify that when a student takes a course for high school graduation credit, the school district or charter in which a student is enrolled is responsible to pay for

tuition, fees, and textbooks related to an ECHS course, to the extent that these costs are not waived by the institution of higher education.

Design of ECHS and Access to Funds and Programs

Comment. Representatives of the College of the Mainland and a representative of Santa Fe ISD commented that the ECHS rule should include specific references to "small learning communities" or "schools within schools." They expressed concern that without these specific references, their schools may not be eligible for future funding for ECHS programs or the Optional Flexible School Day Program.

Agency Response. The agency disagrees. Language in new §102.1091 does not preclude a small learning community or a school within a school from functioning as an ECHS. The rule specifically refers to a school district and a campus because a school district must submit an application to the agency in order to designate a specific campus as an ECHS. Once a campus has been designated as an ECHS, the district may choose to apply for the Optional Flexible School Day Program on behalf of that campus. The Optional Flexible School Day Program may then be made available to students participating in the ECHS.

Size of ECHS

Comment. A representative of Santa Fe ISD requested clarification on whether an ECHS must serve Grades 9-12 and have no more than 100 students per grade level.

Agency Response. The agency offers the following clarification. An ECHS must serve Grades 9-12 according to TEC, §29.908, which states, "the program must provide for a course of study that enables a participating student to combine high school courses and college-level courses during grade levels 9 through 12." New §102.1091 does not specifically define how many students must be in each grade level. However, current grants from TEA do require that each grade level have no more than 100 students.

The new section is adopted under the Texas Education Code, §29.908, which authorizes the commissioner of education to adopt rules as necessary to administer the Early College Education Program.

The new section implements the Texas Education Code, §29.908.

§102.1091. Early College High Schools.

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

(1) Agency--Texas Education Agency.

(2) Commissioner--Commissioner of education.

(3) Early College High School (ECHS)--A school established under the Texas Education Code (TEC), §29.908, that enables a student in Grade 9, 10, 11, or 12 who is at risk of dropping out, as defined by the TEC, §29.081, or who wishes to accelerate completion of high school to combine high school courses and college-level courses. An ECHS program must provide for a course of study that, on or before the fifth anniversary of a student's first day of high school, enables a participating student to receive both a high school diploma and either an associate degree or at least 60 credit hours toward a baccalaureate degree.

(4) Optional Flexible School Day Program (OFSDP)--A program approved by the commissioner of education to provide flexible hours and days of attendance for eligible students in Grades 9-12, as defined in §129.1027 of this title (relating to Optional Flexible School Day Program).

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

(b) Application for approval of an ECHS.

(1) Applicant eligibility. Any school district may submit a separate application on behalf of each campus it requests to designate as an ECHS.

(2) Application process. A school district must submit each application in accordance with the procedures determined by the commissioner.

(c) Notification. The Agency will notify each applicant of its selection or non-selection for designation.

(d) Conditions of ECHS program operation.

(1) A school district operating an ECHS program must comply with all assurances in the program application.

(2) ECHS approval is valid for a maximum of one year.

(3) A student enrolled in an ECHS course for high school graduation credit may not be required to pay for tuition, fees, or required textbooks. The school district or charter in which the student is enrolled shall pay for tuition, fees, and required textbooks, to the extent those charges are not waived by the institution of higher education.

(e) Programs available to an approved ECHS.

(1) Approval as an ECHS will allow a campus to access programs available to the early college education program.

(2) An approved ECHS campus may access the OFSDP defined in §129.1027 of this title. An approved ECHS campus is eligible for OFSDP, but must apply separately in accordance with the TEC, §29.0822, and procedures established by the commissioner.

(f) Evaluation of an ECHS program.

(1) The commissioner will establish specific evaluation procedures prior to the beginning of each school year.

(2) Beginning in 2008-2009, the commissioner shall adopt measures, performance standards, and an appeals process. Failure to meet the standards may result in sanctions under the TEC, Chapter 39, including closure of the program.

(3) Beginning in 2009-2010, each approved ECHS will be required to submit information and required data to the Agency each year in a manner and with a deadline specified by the commissioner. This information must comply with the measures and performance standards set forth by the commissioner.

(g) Renewal or revocation of authority.

(1) In order to renew ECHS approval, a school district must submit a separate renewal application on behalf of each of its approved campuses each year.

(2) The commissioner may deny renewal or revoke the authorization of an ECHS 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 meet performance standards specified in the application; or

(D) failure to provide accurate, timely, and complete information as required by the Agency to evaluate the effectiveness of the ECHS program.

(3) A decision by the commissioner to deny renewal as or revoke authorization of an ECHS is final and may not be appealed.

(4) The commissioner may impose sanctions on a school district as authorized by the TEC, Chapter 39, Subchapter G, for failure to comply with the requirements of this section.

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

Filed with the Office of the Secretary of State on June 12, 2007.

TRD-200702379
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: July 2, 2007
Proposal publication date: February 23, 2007
For further information, please call: (512) 475-1497

♦ ♦ ♦

CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING
SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTABILITY RATING SYSTEM

19 TAC §109.1002

The Texas Education Agency (TEA) adopts an amendment to §109.1002, concerning financial accountability ratings. The amendment is adopted without changes to the proposed text as published in the April 6, 2007, issue of the *Texas Register* (32 TexReg 1988) and will not be republished. The adopted amendment updates the appeal process for the rating system beginning with fiscal year 2006-2007, in accordance with House Bill (HB) 1, 79th Texas Legislature, Third Called Session, 2006.

Senate Bill 218, 77th Texas Legislature, 2001, added the TEC, §§39.201 - 39.204, requiring the commissioner of education, in consultation with the comptroller, to adopt rules for implementation and administration of the financial accountability rating system. 19 TAC Chapter 109, Budgeting, Accounting, and Auditing, Subchapter AA, Commissioner's Rules Concerning Financial Accountability Rating System, adopted to be effective October 20, 2002, establishes provisions that detail the purpose, ratings, types of ratings, criteria, reporting, and sanctions for the financial accountability rating system, in accordance with Senate Bill 218, 77th Texas Legislature, 2001.

The specific rule that establishes indicators applicable to school district financial accountability ratings is 19 TAC §109.1002, Financial Accountability Ratings. This rule includes the financial accountability rating form entitled "School FIRST - Rating Worksheet" that explains the indicators that the TEA will analyze to assign school district financial accountability ratings. This rule also includes a process whereby a district could submit a request for the TEA to review a district's preliminary rating. In accordance with HB 1, Third Called Session, 2006, this financial accountability rating appeal process is to include review by an external review panel.

The adopted amendment to 19 TAC §109.1002 adds language in subsection (e)(2)(A) to modify the appeal process to allow for the review of a district's appeal by an external review panel. The new language addresses the type of appeals that will be considered and the role of the TEA and the external review panel. As directed by HB 1, the rule specifies that the external review panel's recommendation would be forwarded to the commissioner and that the commissioner's decision would be final and not subject to challenge. The amendment to 19 TAC §109.1002 is adopted in consultation with the comptroller.

The public comment period began April 6, 2007, and ended May 6, 2007. No comments were received regarding adoption of the proposed amendment.

The amendment is adopted under the Texas Education Code (TEC), §39.202, which directs the commissioner to develop and implement a financial accountability rating system, and TEC, §39.204, which authorizes the commissioner of education to adopt rules as necessary for the implementation and administration of a financial accountability rating system. In addition, the TEC, §39.301, authorizes the commissioner by rule to provide a process for a school district or open-enrollment charter school to challenge an agency decision relating to an academic or financial accountability rating that affects the district or school. The TEC, §39.301, specifies that the commissioner rule must provide for the appointment of a committee to make recommendations on a challenge made to an agency decision relating to an academic or financial accountability rating.

The amendment implements the Texas Education Code, §§39.202, 39.204 and 39.301.

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

Filed with the Office of the Secretary of State on June 12, 2007.

TRD-200702380
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: July 2, 2007
Proposal publication date: April 6, 2007
For further information, please call: (512) 475-1497

♦ ♦ ♦

CHAPTER 129. STUDENT ATTENDANCE
SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §129.1027

The Texas Education Agency (TEA) adopts new §129.1027, concerning the optional flexible school day program. The new section is adopted with changes to the proposed text as published in the February 23, 2007, issue of the *Texas Register* (32 TexReg 708). The adopted new section establishes provisions for administering the program, including application requirements, in accordance with the Texas Education Code (TEC), §29.0822,

Optional Flexible School Day Program, as added by House Bill 1, 79th Texas Legislature, Third Called Session, 2006.

TEC, §29.0822, grants the commissioner rulemaking authority for administering the Optional Flexible School Day Program (OFSDP), including the establishment of application requirements. Students in Grades 9-12 who are either at risk of dropping out of school or who are attending either an early college high school program or a campus implementing innovative redesign can be served by districts providing flexible attendance schedules. Students participating in the program can vary the hours and days of attendance.

Adopted new §129.1027, Optional Flexible School Day Program, addresses how districts can apply to serve students with flexible schedules while maintaining eligibility for state funding using an alternative method for calculating student attendance. Specifically, the adopted new rule provides definitions for words and terms used in the new rule; describes student eligibility requirements; establishes application procedures, including deadlines for participation in 2006-2007 and subsequent school years; and specifies conditions of program operation. The adopted new rule also specifies requirements relating to attendance, funding, and extracurricular participation. Provisions relating to school district annual performance review, TEA evaluation of OFSDPs, and revocation of or denial to renew authorization are also included in new §129.1027.

The adopted new rule requires districts to apply to the TEA and receive approval prior to operating an OFSDP. Participating districts will also be required to submit attendance information for students participating in the program separately from other student attendance reporting. Most automated student attendance accounting systems currently cannot accommodate alternative student attendance accounting methods to track attendance by minutes or hours instead of by days. Initially, attendance may have to be kept manually by districts participating in this program until vendors can modify software to accommodate alternative methods of student attendance accounting.

New information for recording attendance will be included in the *Student Attendance Accounting Handbook* published annually and adopted by reference as part of the *Texas Administrative Code*.

In response to public comment, the rule was modified since published as proposed. Subsection (b)(2)(B), relating to student eligibility, was modified to specify that the written agreement to participate in the OFSDP may also be obtained from a student under 18 years of age who has attained legal status as an adult by reason of marriage or court order.

Following is a summary of public comments received and corresponding agency responses regarding the proposed new 19 TAC Chapter 129, Student Attendance, Subchapter AA, Commissioner's Rules, §129.1027, Optional Flexible School Day Program.

Comment. The law firm of Schwartz & Eichelbaum, P.C., commented that some at-risk students are under 18 years of age but are married or have had a court remove the disabilities of minority in accordance with Family Code. The firm requested that subsection (b)(2)(B), which references written agreement for participation from students over 18 years of age, include students under 18 who have "otherwise attained legal status as an adult by reason of marriage or court order."

Agency Response. The agency agrees and modified subsection (b)(2)(B) by adding the suggested language. This language will not change the meaning or fiscal impact of the rule.

Comment. The assistant superintendent of Hereford Independent School District expressed support for the rule and commented that the rule provides flexibility to meet the diverse needs of students.

Agency Response. The agency agrees.

Comment. The Texas Classroom Teachers Association recommended that the rule be amended to require the school district board of trustees to obtain evidence of input by the district-level decision-making committee as part of the application process.

Agency Response. The agency disagrees. When a district applies for the OFSDP, the district is responsible for changes to its district improvement plan. Districts are expected to comply with laws and requirements, including those in TEC, §11.252, District-Level Planning and Decision-Making. Including a requirement in the OFSDP rule about the participation of a district-level committee would require TEA to monitor local compliance with TEC, §11.252.

Comment. The superintendent of Paradigm Accelerated Charter School expressed support for the rule and proposed that student attendance for this program be reported through the Public Education Information Management System (PEIMS). The superintendent also proposed that regular and "make up" student attendance be reported for students absent during the normal daily snapshots for not more than the maximum number of hours per academic year.

Agency Response. The agency disagrees with reporting OFSDP attendance through PEIMS. This program is intended to be a separate program and PEIMS cannot currently accommodate alternative methods of attendance reporting. OFSDP attendance will be recorded separately from PEIMS. The agency agrees with reporting regular and "make up" student attendance. A school district or charter school authorized to operate an OFSDP would report attendance for an OFSDP student as the actual time attended whether the student was attending a regularly scheduled class or a flexible class.

Comment. The superintendent of Paradigm Accelerated Charter School expressed support for the rule if it assisted fatherless students.

Agency Response. Statutory authority for the new rule does not specify the population of students eligible for the OFSDP as students without fathers. The program, however, will serve at-risk students as defined by TEC, §29.081.

The new section is adopted under the Texas Education Code, §29.0822, which authorizes the commissioner of education to adopt rules for the administration of the Optional Flexible School Day Program, including rules establishing application requirements.

The new section implements the Texas Education Code, §29.0822.

§129.1027. Optional Flexible School Day 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) Agency--Texas Education Agency.

(2) Campus--For the purposes of this section, a campus is an organization that provides instructional services to students in Grades 9-12, maintains a separate budget, and has an administrator whose primary duty is the full-time administration of the campus.

(3) Commissioner--Commissioner of education.

(4) Instructional contact hours--For purposes of this section, instructional contact hours are the hours spent learning the curriculum under the direct supervision of an educator meeting the qualifications of the State Board for Educator Certification or the employing charter school.

(5) Optional Flexible School Day Program (OFSDP)--Authorized under the Texas Education Code (TEC), §29.0822, a program approved by the commissioner of education to provide flexible hours and days of attendance for eligible students in Grades 9-12, as defined in subsection (b) of this section.

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

(7) School district board of trustees--For the purposes of this section, the definition of a school district board of trustees includes a charter holder board.

(8) School year--For funding purposes, a school year cannot exceed 1,080 instructional hours in a 12-month consecutive period as adopted by the school district board of trustees.

(b) Student eligibility. A student is eligible to participate in an OFSDP if:

(1) the student is enrolled in Grade 9, 10, 11, or 12 and at least one of the following conditions is satisfied:

(A) the student is at risk of dropping out of school, as defined by the TEC, §29.081;

(B) the student is attending a campus implementing an innovative redesign, as defined by the TEC, §39.132; or

(C) the student is attending an approved early college high school program, as defined by the TEC, §29.908; and

(2) either:

(A) the student and the student's parent, or person standing in parental relation to the student, agree in writing to the student's participation if the student is less than 18 years of age and not emancipated by marriage or court order; or

(B) the student agrees in writing to participate if the student is 18 years of age or older or has otherwise attained legal status as an adult by reason of marriage or court order.

(c) Application to operate an OFSDP. Any school district may apply for authorization to operate an OFSDP.

(1) Application process.

(A) The Agency shall make available to each eligible school district an application form for initial approval or renewal that must be completed and submitted annually to the Agency for approval.

(B) The board of trustees of a school district must approve the application. The board of trustees of a school district must include the OFSDP as an item on a regular agenda for a board meeting providing options for public input concerning the proposed application before applying to operate an OFSDP.

(C) A school district must submit an application in accordance with instructions provided by the Agency.

(D) As part of the application process, a school district shall include the following information: implementation plan description, staff plans, schedules, and student attendance accounting security procedures and documentation.

(E) The school district must have submitted the required annual audit report for the immediate prior fiscal year to the Agency division responsible for financial audits. The annual audit must be determined by the Agency to be in compliance with applicable audit standards.

(F) The commissioner may consider academic and financial performance at a campus or a district when reviewing application qualifications.

(G) The Agency may defer or reject an application based on pending or final audit of data submitted, irregularities in assessment administration, accreditation status, accountability ratings, or sanctions under the TEC, Chapter 39.

(H) The Agency may grant or reject an entire application or grant or reject any campus submitted on an application.

(I) The Agency will notify each applicant of its approval or non approval to operate an OFSDP.

(2) Participation in 2006-2007 school year. For the 2006-2007 school year, a school district must have received notice of approval from the Agency prior to participating in the program. This paragraph expires August 31, 2007.

(3) Participation in 2007-2008 and subsequent school years. For the 2007-2008 school year and subsequent school years, a school district must submit an initial or renewal application 90 days prior to the start date of the program. The school district must receive notice of approval to continue or begin participation in the program.

(d) Attendance. A school district must report student OFSDP attendance in a manner provided by the Agency in the Student Attendance Accounting Handbook adopted under §129.1025 of this title (relating to Adoption By Reference: Student Attendance Accounting Handbook). Funding for attendance in an OFSDP is proportionate to attendance in a full-time program meeting the requirements of the TEC, §25.081 and §25.082.

(e) Funding under the TEC, Chapters 41, 42, and 46. Attendance in an OFSDP that is not authorized or does not meet the requirements of the TEC, §29.0822, or this section is not eligible for state funding.

(f) Extracurricular participation. A student enrolled in an OFSDP may participate in a competition or activity sanctioned by the University Interscholastic League (UIL) only if the student meets all UIL eligibility criteria.

(g) Conditions of program operation. A school district and campus operating an OFSDP must comply with all assurances in the program application. Approved OFSDPs will be required to submit annually one progress report on a form to be provided by the Agency and signed by the district superintendent or executive officer. The data in the progress reports must be disaggregated by ethnicity, age, gender, and socioeconomic status. Approved OFSDPs will submit data as stated in the assurances section of the program application.

(1) A school district with a campus operating an OFSDP must reapply annually to continue to operate an OFSDP to verify that student eligibility requirements specified in subsection (b) of this section are met.

(2) A student participating in an OFSDP must take all assessment instruments as defined by the TEC, §39.023, during the regularly scheduled administration periods.

(3) A school district operating an OFSDP must conduct audits every other year of the OFSDP student attendance processes, procedures, and data quality to maintain eligibility for the program. Audits may be conducted by an internal auditor, external auditor, or an authorized school district administrator responsible for student attendance accounting.

(4) The commissioner may consider academic performance and student attendance accounting documentation and procedures to continue district or campus eligibility for the OFSDP.

(h) School district annual performance review.

(1) Annually, each school district shall review its progress in relation to the performance indicators required by this subsection. Progress should be assessed based on information that is disaggregated with respect to race, ethnicity, gender, and socioeconomic status.

(A) A school district must include high school graduation as one of the performance indicators for students participating in the OFSDP.

(B) A school district operating an OFSDP for a campus will select and report student performance indicators appropriate to the population being served. The selected performance indicators must measure student achievement on an annual basis.

(2) At an open meeting of the board of trustees, a school district shall establish and review annual performance goals for the OFSDP related to performance indicators appropriate to the program, as established in paragraph (1) of this subsection and approved by the Agency.

(3) A school district shall ensure that decisions on the continuation of the OFSDP are based on state student assessment results and other student performance data.

(i) Evaluation of programs.

(1) The Agency shall evaluate the OFSDP based on performance indicators established in subsection (h) of this section.

(2) In addition to the evaluation on the indicators identified in subsection (h) of this section, a school district shall be evaluated based on student assessment administration and student attendance accounting processes and procedures.

(j) Revocation of or denial to renew authorization to operate an OFSDP.

(1) The commissioner may revoke authorization or deny renewal of an OFSDP based on the following factors:

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

(B) failure to keep timely and accurate audit and attendance accounting records;

(C) failure to maintain student eligibility requirements specified in subsection (b) of this section if one of these designations was used as an eligibility criteria for OFSDP;

(D) lack of program success as evidenced by progress reports or program data; or

(E) failure to provide accurate, timely, and complete information as required by the Agency to evaluate the effectiveness of the OFSDP.

(2) A revocation or non-renewal of an approved OFSDP takes effect for the semester immediately following the date on which the revocation or non-renewal is issued unless another date is determined by the commissioner.

(3) An OFSDP is entitled to a ten-day notice of the proposed revocation or non-renewal and an informal review by the commissioner's designee.

(4) A decision by the commissioner to revoke the authorization or deny renewal of an OFSDP is final and may not be appealed.

(5) The OFSDP is a state program that may be monitored by an on-site visit under the TEC, §39.075. Student attendance accounting records are subject to audit under §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes). The commissioner may impose sanctions on a school district under the TEC, §39.131, for failure to comply with the OFSDP requirements of this section.

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

Filed with the Office of the Secretary of State on June 14, 2007.

TRD-200702419
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: July 4, 2007
Proposal publication date: February 23, 2007
For further information, please call: (512) 475-1497

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 163. LICENSURE

22 TAC §§163.1, 163.2, 163.4, 163.6 - 163.9

The Texas Medical Board (Board) adopts the amendments to §§163.1, 163.2, 163.4, and 163.6, and new §§163.7 - 163.9, relating to Licensure, without changes to the proposed text as published in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2439) and will not be republished.

Prior to publishing the proposed amendments and the new rules, the Board sought stakeholder input through a Licensure Stakeholder Group, which made comments on the suggested changes to the rules at a meeting held on March 23, 2007. The comments were incorporated into the published proposed rules.

The Board received no public written comments and no one appeared to testify at the public hearing held on June 8, 2007.

The amendment and new sections are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §155.003(d), 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.

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

Filed with the Office of the Secretary of State on June 13, 2007.

TRD-200702382
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Effective date: July 3, 2007
Proposal publication date: May 4, 2007
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 164. PHYSICIAN ADVERTISING

22 TAC §164.4

The Texas Medical Board (Board) adopts the amendments to §164.4, relating to physician advertising of board certification, without changes to the proposed text as published in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2442) and will not be republished.

Prior to publishing the proposed amendments, the Board sought stakeholder input through a Enforcement Stakeholder Group, which made comments on the suggested changes to the rules at meetings held on March 23, 2007 and May 16, 2007. The comments were incorporated into the published proposed rules.

At the public hearing held on June 8, 2007, the Board received comments from the Texas Academy of Palliative Medicine. No other comments were received by the Board, either in writing or by testimony at the hearing.

Comment No. 1: The Texas Academy of Palliative Medicine commented that physicians certified by the American Board of Hospice and Palliative Medicine ("ABHPM") be allowed to advertise their board certification, even though ABHPM is not a member of the American Board of Medical Specialties ("ABMS") or the Bureau of Osteopathic Specialties ("BOS"). The basis of the recommendation is that palliative medicine is the newest member of the ABMS and certification for physicians in this field will not begin until 2008. Therefore, those certified by the former certifying organization should be allowed to advertise their board certification during the transition period.

Response to Comment No. 1: The Board disagrees with these comments. The Board's rules are designed to assure the quality of the certification process before a physician is allowed to advertise certification. If the ABHPM did not meet the requirements previously, it does not meet the requirements today and physicians should not be allowed to advertise board certification by an organization that does not meet the requirements. For these reasons, the Board does not believe that any changes should be made to the rule as published. The Board has adopted amendments to §164.4, as published, without changes.

The amendment is adopted 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.

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

Filed with the Office of the Secretary of State on June 13, 2007.

TRD-200702383
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Effective date: July 3, 2007
Proposal publication date: May 4, 2007
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 166. PHYSICIAN REGISTRATION

22 TAC §166.5

The Texas Medical Board (Board) adopts the amendments to §166.5, relating to relicensure, without changes to the proposed text as published in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2443) and will not be republished.

Prior to publishing the proposed amendments, the Board sought stakeholder input through a Licensure Stakeholder Group, which made comments on the suggested changes to the rules at a meeting held on March 23, 2007. The comments were incorporated into the published proposed rules.

The Board received no public written comments and no one appeared to testify at the public hearing held on June 8, 2007.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §155.003(d) 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.

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

Filed with the Office of the Secretary of State on June 13, 2007.

TRD-200702384
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Effective date: July 3, 2007
Proposal publication date: May 4, 2007
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 172. TEMPORARY AND LIMITED LICENSES
SUBCHAPTER B. TEMPORARY LICENSES

22 TAC §172.5

The Texas Medical Board (Board) adopts the amendments to §172.5, relating to temporary and limited licenses, without changes to the proposed text as published in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2444) and will not be republished.

Prior to publishing the proposed amendments, the Board sought stakeholder input through a Licensure Stakeholder Group, which made comments on the suggested changes to the rules at a meeting held on March 23, 2007. The comments were incorporated into the published proposed rules.

The Board received comments regarding proposed amendments to §172.5 from the Texas Association of Community Health Centers, Inc. No other comments were received by the Board, either in writing or by testimony at the hearing.

Comment No. 1: The Texas Association of Community Health Centers, Inc. commented that the word "Visiting" should be removed from the title of the Visiting Physician Temporary Permit.

Response to Comment No. 1: The Board disagrees with this comment. Deleting the word "Visiting" would create confusion with temporary licenses that the Board issues pursuant to §172.11 of the Board Rules. For this reason, the Board does not believe that any changes should be made to the rules as published. The Board has adopted amendments to §172.5, as published, without changes.

Comment No. 2: The Texas Association of Community Health Centers, Inc. commented that the rule should add detail to better define facilities that might utilize the permit.

Response to Comment No. 2. The Board disagrees with this comment. The rule as proposed does not limit the facilities that might utilize the permit. To add such language could be interpreted as limiting the use of the permit. For this reason, the Board does not believe that any changes should be made to the rules as published. The Board has adopted amendment to §172.5, as published, without changes.

Comment No. 3: The Texas Association of Community Health Centers, Inc. commented that the rule should add a timeline of thirty days as a limit for issuing a Visiting Physician Temporary Permit.

Response to Comment No. 3. The Board disagrees with this comment. Historically, the Board has issued such permits in much less than the thirty days, requested by the comment. Therefore, a thirty day timeline is not necessary. For this reason, the Board does not believe that any changes should be made to the rules as published. The Board has adopted amendment to §172.5, as published, without changes.

Comment No. 4: The Texas Association of Community Health Centers, Inc. commented that the rule should extend the length of the temporary permit from one week to thirty days.

Response to Comment No. 4: The Board disagrees with this comment. The Executive Director is authorized to extend the permit as necessary and appropriate. The visiting Physician Temporary Permit is used in some instances in which it is used only for a few days. Therefore, the minimum length of the permit should be only for as long as might be necessary in these situations. For this reason, the Board does not believe that any changes should be made to the rules as published. The Board has adopted amendments to §172.5, as published, without changes.

Comment No. 5: The Texas Association of Community Health Centers, Inc. commented that the rule should include the supervising physician in the process to extend the length of the temporary permit.

Response to Comment No. 5. The Board disagrees with this comment. While this comment has merit, it in not necessary to accomplish this change by an amendment to the proposed rule. It can be accomplished by a revision to the application for a Visiting Physician Temporary Permit, which can be done by Board Staff. For this reason, the Board does not believe that any changes should be made to the rule as published. The Board has adopted amendments to §172.5, as published, without changes.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §155.009, which provides 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.

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

Filed with the Office of the Secretary of State on June 13, 2007.

TRD-200702385
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Effective date: July 3, 2007
Proposal publication date: May 4, 2007
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 173. PHYSICIAN PROFILES

22 TAC §173.3

The Texas Medical Board (Board) adopts the amendments to §173.3, relating to physician-initiated updates to physician profiles, without changes to the proposed text as published in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2445) and will not be republished.

Prior to publishing the proposed amendment, the Board sought stakeholder input through a Enforcement Stakeholder Group, which made comments on the suggested changes to the rules at a meeting held on March 23, 2007 and May 16, 2007. The comments were incorporated into the published proposed rule.

The Board received no public written comments and no one appeared to testify at the public hearing held on June 8, 2007.

The amendment is adopted 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.

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

Filed with the Office of the Secretary of State on June 13, 2007.

TRD-200702386
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Effective date: July 3, 2007
Proposal publication date: May 4, 2007
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 182. USE OF EXPERTS

22 TAC §182.5

The Texas Medical Board (Board) adopts the amendments to §182.5, relating to expert panels, without changes to the proposed text as published in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2446) and will not be republished.

Prior to publishing the proposed amendments, the Board sought stakeholder input through an Enforcement Stakeholder Group, which made comments on the suggested changes to the rules at a meeting held on March 23, 2007 and May 16, 2007. The comments were incorporated into the published proposed rule.

The Board received no public written comments; and no one appeared to testify at the public hearing held on June 8, 2007.

The amendment is adopted 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.

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

Filed with the Office of the Secretary of State on June 13, 2007.

TRD-200702387
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Effective date: July 3, 2007
Proposal publication date: May 4, 2007
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 184. SURGICAL ASSISTANTS

22 TAC §§184.4, 184.8, 184.26

The Texas Medical Board (Board) adopts the amendments to §184.4 and §184.8, and new §184.26, relating to the licensure of surgical assistants, without changes to the proposed text as published in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2446) and will not be republished.

Prior to publishing the proposed amendments, the Board sought stakeholder input through a Licensure Stakeholder Group, which made comments on the suggested changes to the rules at a meeting held on March 23, 2007. The comments were incorporated into the published proposed rules.

The Board received no public written comments; and no one appeared to testify at the public hearing held on June 8, 2007.

The amendments and new rules are adopted under the authority of the Texas Occupations Code Annotated, §206.101 and §206.210, 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.

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

Filed with the Office of the Secretary of State on June 13, 2007.

TRD-200702388
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Effective date: July 3, 2007
Proposal publication date: May 4, 2007
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 187. PROCEDURAL RULES
SUBCHAPTER G. SUSPENSION BY OPERATION OF LAW

22 TAC §§187.70 - 187.73

The Texas Medical Board (Board) adopts new §§187.70 - 187.73, relating to suspension by operation of law, without changes to the proposed text as published in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2448) and will not be republished.

Prior to publishing the proposed new rules, the Board sought stakeholder input through an Enforcement Stakeholder Group, which made comments on the suggested changes to the rules at a meeting held on March 23, 2007 and May 16, 2007. The comments were incorporated into the published proposed rules.

The Board received no public written comments; and no one appeared to testify at the public hearing held on June 8, 2007.

The new sections are adopted 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.

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

Filed with the Office of the Secretary of State on June 13, 2007.

TRD-200702389
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Effective date: July 3, 2007
Proposal publication date: May 4, 2007
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 190. DISCIPLINARY GUIDELINES
SUBCHAPTER B. VIOLATION GUIDELINES

22 TAC §190.8

The Texas Medical Board (Board) adopts the amendments to §190.8, relating to violation guidelines, with changes to the proposed text as published in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2449).

Prior to publishing the proposed amendments, the Board sought stakeholder input through an Enforcement Stakeholder Group,

which made comments on the suggested changes to the rules at meetings held on March 23, 2007 and May 16, 2007. The comments were incorporated into the published proposed rules.

The Board received comments regarding the proposed amendments from the Texas Department of Insurance ("TDI") and the Texas Association of Health Plans ("TAHP").

Comment No. 1: TDI commented that proposed §190.8(1)(N) arguably requires utilization review agents, who are certified by TDI, to follow conflicting requirements. TDI noted that §4201.304(a)(3), Insurance Code, requires that utilization review agents render a decision within one hour, which may conflict with the proposed amendment.

Response to Comment No. 1. The Board has responded to this comment by deleting the proposed amendment to §190.8(1)(N). The Board has also authorized the republication of this proposed amendment with the change suggested by TDI, which will provide an opportunity for further comment on the proposed rule. The proposed amendment will be published upon the effective date of this adoption.

Comment No. 2: TAHP commented that medical directors, who determine coverage under a health plan, rather than the course of treatment for a patient, may be covered by the proposed rule. TAHP argues that attempts to regulate the activities of health plan medical directors not engaged in the practice of medicine would exceed the Board's authority and that the proposed §190.8(1)(N) should be struck.

Response to Comment No. 2. The Board has responded to this comment by deleting the proposed amendment to §190.8(1)(N). The Board has also authorized the republication of this proposed amendment with a change suggested by TDI, which will provide an opportunity for the Board to further assess the Board's authority to adopt this proposed rule and to receive further comment on the proposed rule. The proposed amendment will be published upon the effective date of this adoption.

The Board received no further public written comments and no one appeared to testify at the public hearing held on June 8, 2007.

The amendment is adopted 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.

§190.8. Violation Guidelines.

When substantiated by credible evidence, the following acts, practices, and conduct are considered to be violations of the Act. The following shall not be considered an exhaustive or exclusive listing.

(1) Practice Inconsistent with Public Health and Welfare. Failure to practice in an acceptable professional manner consistent with public health and welfare within the meaning of the Act includes, but is not limited to:

(A) failure to treat a patient according to the generally accepted standard of care;

(B) negligence in performing medical services;

(C) failure to use proper diligence in one's professional practice;

(D) failure to safeguard against potential complications;

(E) improper utilization review;

(F) failure to timely respond in person when on-call or when requested by emergency room or hospital staff;

(G) failure to disclose reasonably foreseeable side effects of a procedure or treatment;

(H) failure to disclose reasonable alternative treatments to a proposed procedure or treatment;

(I) failure to obtain informed consent from the patient or other person authorized by law to consent to treatment on the patient's behalf before performing tests, treatments, or procedures;

(J) termination of patient care without providing reasonable notice to the patient;

(K) prescription or administration of a drug in a manner that is not in compliance with Chapter 200 of this title (relating to Standards for Physicians Practicing Complementary and Alternative Medicine) or, that is either not approved by the Food and Drug Administration (FDA) for use in human beings or does not meet standards for off-label use, unless an exemption has otherwise been obtained from the FDA;

(L) prescription of any dangerous drug or controlled substance without first establishing a proper professional relationship with the patient.

(i) A proper relationship, at a minimum requires:

(I) establishing that the person requesting the medication is in fact who the person claims to be;

(II) establishing a diagnosis through the use of acceptable medical practices such as patient history, mental status examination, physical examination, and appropriate diagnostic and laboratory testing. An online or telephonic evaluation by questionnaire is inadequate;

(III) discussing with the patient the diagnosis and the evidence for it, the risks and benefits of various treatment options; and

(IV) ensuring the availability of the licensee or coverage of the patient for appropriate follow-up care.

(ii) A proper professional relationship is also considered to exist between a patient certified as having a terminal illness and who is enrolled in a hospice program, or another similar formal program which meets the requirements of subclauses (I) through (IV) of this clause, and the physician supporting the program. To have a terminal condition for the purposes of this rule, the patient must be certified as having a terminal illness under the requirements of 40 TAC §97.403 and 42 CFR 418.22.

(M) inappropriate prescription of dangerous drugs or controlled substances to oneself, family members, or others in which there is a close personal relationship that would include the following:

(i) prescribing or administering dangerous drugs or controlled substances without taking an adequate history, performing a proper physical examination, and creating and maintaining adequate records; and

(ii) prescribing controlled substances in the absence of immediate need. "Immediate need" shall be considered no more than 72 hours.

(N) providing on-call back-up by a person who is not licensed to practice medicine in this state or who does not have adequate training and experience.

(2) Unprofessional and Dishonorable Conduct. Unprofessional and dishonorable conduct that is likely to deceive, defraud, or injure the public within the meaning of the Act includes, but is not limited to:

(A) violating a board order;

(B) failing to comply with a board subpoena or request for information or action;

(C) providing false information to the board;

(D) failing to cooperate with board staff;

(E) engaging in sexual contact with a patient;

(F) engaging in sexually inappropriate behavior or comments directed towards a patient;

(G) becoming financially or personally involved with a patient in an inappropriate manner;

(H) referring a patient to a facility without disclosing the existence of the licensee's ownership interest in the facility to the patient;

(I) using false, misleading, or deceptive advertising;

(J) providing medically unnecessary services to a patient or submitting a billing statement to a patient or a third party payer that the licensee knew or should have known was improper. "Improper" means the billing statement is false, fraudulent, misrepresents services provided, or otherwise does not meet professional standards;

(K) behaving in an abusive or assaultive manner towards a patient or the patient's family or representatives that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient;

(L) failing to timely respond to communications from a patient;

(M) failing to complete the required amounts of CME;

(N) failing to maintain the confidentiality of a patient;

(O) failing to report suspected abuse of a patient by a third party, when the report of that abuse is required by law;

(P) behaving in a disruptive manner toward licensees, hospital personnel, other medical personnel, patients, family members or others that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient;

(Q) entering into any agreement whereby a licensee, peer review committee, hospital, medical staff, or medical society is restricted in providing information to the board; and

(R) commission of the following violations of federal and state laws whether or not there is a complaint, indictment, or conviction:

(i) any felony;

(ii) any offense in which assault or battery, or the attempt of either is an essential element;

(iii) any criminal violation of the Medical Practice Act or other statutes regulating or pertaining to the practice of medicine;

(iv) any criminal violation of statutes regulating other professions in the healing arts that the licensee is licensed in;

(v) any misdemeanor involving moral turpitude as defined by paragraph (6) of this section;

(vi) bribery or corrupt influence;

(vii) burglary;

(viii) child molestation;

(ix) kidnapping or false imprisonment;

(x) obstruction of governmental operations;

(xi) public indecency; and

(xii) substance abuse or substance diversion.

(S) contacting or attempting to contact a complainant or witness regarding an investigation by the board for purposes of intimidation. It is not a violation for a licensee under investigation to have contact with a complainant or witness if the contact is in the normal course of business and unrelated to the investigation.

(3) Disciplinary actions by another state board. A voluntary surrender of a license in lieu of disciplinary action or while an investigation or disciplinary action is pending constitutes disciplinary action within the meaning of the Act. The voluntary surrender shall be considered to be based on acts that are alleged in a complaint or stated in the order of voluntary surrender, whether or not the licensee has denied the facts involved.

(4) Disciplinary actions by peer groups. A voluntary relinquishment of privileges or a failure to renew privileges with a hospital, medical staff, or medical association or society while investigation or a disciplinary action is pending or is on appeal constitutes disciplinary action that is appropriate and reasonably supported by evidence submitted to the board, within the meaning of section 164.051(a)(7) the Act.

(5) Repeated or recurring meritorious health care liability claims. It shall be presumed that a claim is "meritorious," within the meaning of section 164.051(a)(8) of the Act, if there is a finding by a judge or jury that a licensee was negligent in the care of a patient or if there is a settlement of a claim without the filing of a lawsuit or a settlement of a lawsuit against the licensee in the amount of $50,000 or more. Claims are "repeated or recurring," within the meaning of section 164.051(a)(8) of the Act, if there are three or more claims in any five-year period. The date of the claim shall be the date the licensee or licensee's medical liability insurer is first notified of the claim, as reported to the board pursuant to section 160.052 of the Act or otherwise.

(6) Discipline based on Criminal Conviction. The board is authorized by the following separate statutes to take disciplinary action against a licensee based on a criminal conviction:

(A) Felonies.

(i) Section 164.051(a)(2)(B) of the Medical Practice Act, section 204.303(a)(2) of the Physician Assistant Act, and section 203.351(a)(7) of the Acupuncture Act, (collectively, the "Licensing Acts") authorize the board to take disciplinary action based on a conviction, deferred adjudication, community supervision, or deferred disposition for any felony.

(ii) Chapter 53, Tex. Occ. Code authorizes the board to revoke or suspend a license on the grounds that a person has been convicted of a felony that directly relates to the duties and responsibilities of the licensed occupation.

(iii) Because the provisions of the Licensing Acts may be based on either conviction or a form of deferred adjudication, the board determines that the requirements of the Act are stricter than the requirements of Chapter 53 and, therefore, the board is not required to comply with Chapter 53, pursuant to section 153.0045 of the Act.

(iv) Upon the initial conviction for any felony, the board shall suspend a physician's license, in accordance with section 164.057(a)(1)(A), of the Act.

(v) Upon final conviction for any felony, the board shall revoke a physician's license, in accordance with section 164.057(b) of the Act

(B) Misdemeanors.

(i) Section 164.051(a)(2)(B) of the Act authorizes the board to take disciplinary action based on a conviction, deferred adjudication, community supervision, or deferred disposition for any misdemeanor involving moral turpitude.

(ii) Chapter 53, Tex. Occ. Code authorizes the board to revoke or suspend a license on the grounds that a person has been convicted of a misdemeanor that directly relates to the duties and responsibilities of the licensed occupation.

(iii) For a misdemeanor involving moral turpitude, the provisions of section 164.051(a)(2) of the Medical Practice Act and section 205.351(a)(7) of the Acupuncture Act, may be based on either conviction or a form of deferred adjudication, and therefore the board determines that the requirements of these licensing acts are stricter than the requirements of Chapter 53 and the board is not required to comply with Chapter 53, pursuant to section 153.0045 of the Act.

(iv) The Medical Practice Act and the Acupuncture Act do not authorize disciplinary action based on conviction for a misdemeanor that does not involve moral turpitude. The Physician Assistant Act does not authorize disciplinary action based on conviction for a misdemeanor. Therefore these licensing acts are not stricter than the requirements of Chapter 53 in those situations. In such situations, the conviction will be considered to directly relate to the practice of medicine if the act:

(I) arose out of the practice of medicine, as defined by the Act;

(II) arose out of the practice location of the physician;

(III) involves a patient or former patient;

(IV) involves any other health professional with whom the physician has or has had a professional relationship;

(V) involves the prescribing, sale, distribution, or use of any dangerous drug or controlled substance; or

(VI) involves the billing for or any financial arrangement regarding any medical service;

(v) Misdemeanors involving moral turpitude. Misdemeanors involving moral turpitude, within the meaning of the Act, are those that involve dishonesty, fraud, deceit, misrepresentation, deliberate violence, or that reflect adversely on a licensee's honesty, trustworthiness, or fitness to practice under the scope of the person's license.

(C) In accordance with section 164.058 of the Act, the board shall suspend the license of a licensee serving a prison term in a state or federal penitentiary during the term of the incarceration regardless of the offense.

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

Filed with the Office of the Secretary of State on June 13, 2007.

TRD-200702390

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Effective date: July 3, 2007

Proposal publication date: May 4, 2007

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

♦ ♦ ♦

CHAPTER 196. VOLUNTARY RELINQUISHMENT OR SURRENDER OF A MEDICAL LICENSE

22 TAC §196.1, §196.4

The Texas Medical Board (Board) adopts the amendments to §196.1 and §196.4, relating to voluntary surrender of a license, without changes to the proposed text as published in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2450) and will not be republished.

Prior to publishing the proposed amendments, the Board sought stakeholder input through a Enforcement Stakeholder Group, which made comments on the suggested changes to the rules at a meeting held on March 23, 2007 and May 16, 2007. The comments were incorporated into the published proposed rules.

The Board received no public written comments and no one appeared to testify at the public hearing held on June 8, 2007.

The amendments are adopted 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.

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

Filed with the Office of the Secretary of State on June 13, 2007.

TRD-200702391

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Effective date: July 3, 2007

Proposal publication date: May 4, 2007

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

♦ ♦ ♦

CHAPTER 198. UNLICENSED PRACTICE

22 TAC §§198.1 - 198.6

The Texas Medical Board (Board) adopts the amendments to §198.1 and new §§198.2 - 198.6, relating to the unlicensed practice of medicine, without changes to the proposed text as published in the May 4, 2007, issue of the *Texas Register* (32 TexReg 2450) and will not be republished.

Prior to publishing the proposed rules, the Board sought stakeholder input through a Enforcement Stakeholder Group, which made comments on the suggested changes to the rules at a meeting held on March 23, 2007 and May 16, 2007. The comments were incorporated into the published proposed rules.

The Board received no public written comments and no one appeared to testify at the public hearing held on June 8, 2007.

The amendment and new sections are adopted 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.

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

Filed with the Office of the Secretary of State on June 13, 2007.

TRD-200702392
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Effective date: July 3, 2007
Proposal publication date: May 4, 2007
For further information, please call: (512) 305-7016

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 140. HEALTH PROFESSIONS REGULATION

SUBCHAPTER C. SANITARIANS

25 TAC §§140.101 - 140.119

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), adopts new §§140.101 - 140.119, concerning the registration of sanitarians without changes to the proposed text as published in the March 30, 2007, issue of the *Texas Register* (32 TexReg 1828) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The new rules are necessary to consolidate existing Professional Licensing and Certification Unit program rules in 25 Texas Administrative Code (TAC) Chapter 140, Health Professions Regulation. The rules also constitute the advisory committee review required by 25 TAC §265.131(e) which will be located in §140.119. The new rules transfer and update existing language, and do not impose any new requirements or fees on applicants or licensees. The new rules also clarify that applicants may pass the examination required for registration either as a Texas candidate or as a part of the National Environmental Health Association (NEHA) Registered Environmental Health Specialist/Registered Sanitarian certification process.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 265.131, 265.141 - 265.149, and 265.151 - 265.159 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed; however, the department repealed the sections and adopted the rules in 25 TAC Chapter 140, Health Professions Regulation.

SECTION-BY-SECTION SUMMARY

New §140.101 sets forth purpose and scope of the rules. New §140.102 includes definitions for terms used within the rules. New §140.103 lists the fees required for application, registration, upgrade, renewal, and issuance of a duplicate certificate. New §140.104 describes application procedures. New §140.105 lists qualification for registration as a sanitarian or a sanitarian in training, including types of acceptable experience. New §140.106 lists the types of college courses considered acceptable or not acceptable to meet the requirement for initial registration. New §140.107 sets forth information concerning the administration, content, grading, and other procedures for examination for registration. The new rules clarify that applicants may pass the examination required for registration either as a Texas candidate or as a part of the National Environmental Health Association (NEHA) Registered Environmental Health Specialist/Registered Sanitarian certification process. New §140.108 describes the procedures and criteria for approval or disapproval of an application by the department. New §140.109 provides timelines for the processing of initial and renewal applications, and for refunds to be issued if the timelines are exceeded without sufficient cause. New §140.110 covers procedures for the issuance of a certificate of registration, including duplicates and name changes. New §140.111 sets forth information concerning registration renewal and late renewal, including renewal procedures for a registration on active military duty. New §140.112 covers exemption from renewal and continuing education requirements for retired registered sanitarians. New §140.113 sets forth continuing education requirements. New §140.114 covers exemptions from the requirement for registration. New §140.115 sets out the guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain registration. New §140.116 lists the grounds for denial, suspension or revocation of a registration. New §140.117 details standards related to advertising by a registrant. New §140.118 sets out violations and prohibited actions, procedures concerning complaints, and actions the department may take against a person when violations have occurred. New §140.119 covers the membership and operations of the advisory committee, and establishes the next review date as September 1, 2011.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services Deputy General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The new rules are authorized by Occupations Code, §1953.051, which authorizes the adoption of rules regarding sanitarians; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and hu-

man services by the department and for the administration of Health and Safety Code, Chapter 1001.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702481
Lisa Hernandez
Deputy General Counsel
Department of State Health Services
Effective date: July 5, 2007
Proposal publication date: March 30, 2007
For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

CHAPTER 265. GENERAL SANITATION

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), adopts the repeal of §§265.131, 265.141 - 265.149 and 265.151 - 265.159, concerning the registration of sanitarians without changes to the proposed text as published in the March 30, 2007, issue of the *Texas Register* (32 TexReg 1840) and will not be republished.

BACKGROUND AND PURPOSE

The repeals are necessary to consolidate existing Professional Licensing and Certification Unit program rules in 25 Texas Administrative Code (TAC), Chapter 140, Health Professions Regulation. The rules also constitute the advisory committee review required by 25 TAC, §265.131(e) which will be located in §140.119. The new rules transfer and update existing language, and do not impose any new requirements or fees on applicants or licensees. The new rules also clarify that applicants may pass the examination required for registration either as a Texas candidate or as a part of the National Environmental Health Association (NEHA) Registered Environmental Health Specialist/Registered Sanitarian certification process.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 265.131, 265.141 - 265.149, and 265.151 - 265.159 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed; however, the department repealed the sections and adopted the rules in 25 TAC, Chapter 140, Health Professions Regulation.

SECTION-BY-SECTION SUMMARY

The repeal of §§265.131, 265.141 - 265.149, and 265.151 - 265.159 is necessary in order to combine the Professional Licensing and Certification Unit rules in one chapter, 25 TAC, Chapter 140, Health Professions Regulation.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services Deputy General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

SUBCHAPTER J. ADVISORY COMMITTEE

25 TAC §265.131

STATUTORY AUTHORITY

The repeal is authorized by Occupations Code, §1953.051, which authorizes the adoption of rules regarding sanitarians; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702473
Lisa Hernandez
Deputy General Counsel
Department of State Health Services
Effective date: July 5, 2007
Proposal publication date: March 30, 2007
For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

SUBCHAPTER K. REGISTRATION OF SANITARIANS

25 TAC §§265.141 - 265.149, 265.151 - 265.159

STATUTORY AUTHORITY

The repeals are authorized by Occupations Code, §1953.051, which authorizes the adoption of rules regarding sanitarians; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702474
Lisa Hernandez
Deputy General Counsel
Department of State Health Services
Effective date: July 5, 2007
Proposal publication date: March 30, 2007
For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

CHAPTER 412. LOCAL MENTAL HEALTH AUTHORITY RESPONSIBILITIES
SUBCHAPTER P. PROVIDER NETWORK DEVELOPMENT

25 TAC §§412.751 - 412.754, 412.756, 412.758, 412.760, 412.762, 412.764, 412.766

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS), adopts new §§412.751 - 412.754, 412.756, 412.758, 412.760, 412.762, 412.764, and 412.766, concerning local mental health authorities (LMHAs) and the development of a network of service providers within each LMHA's local service area. The new sections are adopted without changes to the text as published in the March 16, 2007, issue of the *Texas Register* (32 TexReg 1458) and will not be republished. The new rules establish the requirements of an LMHA in assembling and maintaining a network of service providers and set forth the conditions under which an LMHA may serve as a provider of services.

BACKGROUND AND PURPOSE

A negotiated rulemaking process was used to develop the rules, in accordance with the requirements of the Texas Government Code, Chapter 2008, concerning Negotiated Rulemaking. DSHS appointed a negotiated rulemaking committee, which first met on October 10, 2006, and continued to meet over the course of the next several months, totaling more than 100 hours of discussion and negotiations presided over by facilitators appointed by DSHS. On January 10, 2007, the negotiated rulemaking committee submitted a final report to DSHS, which includes the text of the rules. This report is public information and can be found on the DSHS website at http://www.dshs.state.tx.us/mhcommunity/provider.shtm. The negotiated rulemaking committee also submitted additional recommendations regarding implementation of the rules, and these recommendations can also be found on the website referenced above.

Section 533.035 of the Texas Health and Safety Code articulates a clear preference for a system of service delivery in which consumers have choice from among multiple service providers and in which the LMHA's role is to provide management and oversight. The extent to which this goal can be achieved in any given service area and how quickly it can be reached will depend on the circumstances, needs, and preferences of the local communities served by each LMHA.

Section 533.035(c) of the Texas Health and Safety Code charges LMHAs with responsibility for ensuring that mental health services are provided in their local service areas and, further, requires LMHAs to consider public input, ultimate cost-benefit, and client-care issues to ensure consumer choice and the best use of public money in assembling a network of service providers. This language clearly recognizes that decisions regarding the structure of service delivery networks must balance a complex and diverse range of considerations and interests. These include the needs and preferences of the local community, prudent stewardship of public dollars, the need to achieve the best possible client outcomes, the right of consumers to exercise control and make decisions regarding their health, and the responsibility to achieve the greatest return on public investment in mental health services.

Given the diversity of LMHAs' local service areas and their constituent communities, it is impossible to create a single template defining the procedures and timelines for implementing the statutory provisions that would comply with these overarching principles. Instead, the rules establish a uniform process for planning and implementation that provides a framework within which each LMHA must work with stakeholders and the local communities it serves in assembling a network of providers that provides the most appropriate and available treatment alternatives to individuals in need of mental health services.

This framework incorporates checks and balances to ensure that LMHA decisions reflect an appropriate consideration of the diverse and often competing interests and needs of stakeholders at both the state and local level. First, the process is public and transparent. LMHAs are required to make public their local network development plans and procurement documents prior to implementation. Second, LMHAs must solicit and respond to stakeholder comments at key points in the process: in the early phases of the planning process; prior to submitting a plan to DSHS for approval; and before initiating either a request for proposals or open enrollment, the two methods of procurement an LMHA is likely to use extensively in assembling or expanding its provider network. Finally, DSHS is given responsibility for reviewing and approving each LMHA's local network development plan, including the LMHA's rationale and supporting documentation, response to any public input, previous efforts, and progress toward assembling a network of external providers; DSHS may require revisions prior to approval of an LMHA's local network development plan.

The approach laid out in this subchapter accommodates the circumstances and needs of local communities across the state and anticipates considerable diversity in the plans and activities undertaken by various LMHAs. The rules recognize that the unique characteristics of the local communities served by each LMHA will result in a wide variance among the LMHAs in terms of the extent and rate to which they are able to assemble or expand their provider networks to include external providers and the rate at which they are able to make the transition away from being providers of services. For example, an LMHA in a local service area comprised strictly of rural and frontier counties may find few, if any, external providers willing to locate in such a sparsely populated region. With an insufficient supply of external providers to meet local demand, the LMHA might continue to serve as the primary provider in that area for an extended period with its external provider network comprised solely of a few individual practitioners. In contrast, an LMHA located in an urban area with a large number of experienced external providers might find it realistic to implement a plan designed to transition to a largely external provider network within just a few years. Another example is an LMHA's determination that it is necessary to be a provider of certain services in order to ensure that contracted providers are able to comply with performance standards and other contract requirements over an extended period of time, before completely divesting itself of the provider role.

DSHS expects that each LMHA's local network development plan will incorporate strategies to ensure continuous consumer access to services while the LMHA maintains a steadily decreasing share of service provision responsibilities during the transition period. In developing its local network development plan, the LMHA, while complying with the requirements of this subchapter and with input from stakeholders and DSHS, will be allowed to determine the rate at which this transition will occur.

While the rules provide considerable flexibility to address local needs, they also lay out clear criteria for determining when an LMHA is authorized to provide services. These criteria, together with other provisions in this subchapter, integrate the language defining an LMHA as a provider of last resort with the broader considerations articulated in Texas Health and Safety Code §533.035(c) and provide structure for translating those considerations into decisions regarding the assembly of a provider network.

In addition to requiring LMHAs to develop local network development plans that establish the extent and rate at which external providers will be utilized, the rules describe procurement practices specific to an LMHA's development of external provider networks. These provisions do not negate the application or effect of 25 TAC Chapter 412, Subchapter B, relating to Contracts Management for Local Authorities. Those rules will be reviewed by DSHS to determine whether they should be amended or repealed, but while they are in effect, the requirements of this subchapter will prevail if there is a conflict between those rules and this subchapter regarding an LMHA's responsibilities in contracting with providers of mental health services.

SECTION-BY-SECTION SUMMARY

§412.751. Purpose.

Section 412.751 states that the purpose of the rules is to establish the process for an LMHA to assemble and maintain a network of service providers, as required by the Texas Health and Safety Code, §533.035(b) - (f).

§412.752. Application.

Section 412.752 indicates that the rules would apply to LMHAs and their use of funds disbursed to them by DSHS pursuant to the Texas Health and Safety Code, §533.035(b). Therefore, the rules would not apply to an LMHA's use of funds other than "department federal and department state funds" disbursed to an LMHA by DSHS by contract or other allocation method. Because DSHS currently allocates federal and state funds to LMHAs through the DSHS performance contract, the rules would apply to funds received by the LMHAs through the DSHS performance contract, including, for example, federal Mental Health Block Grant funds and state general revenue funds. The rules would not apply to an LMHA's use of funds received through local contributions from a participating local agency pursuant to the Texas Health and Safety Code §534.019, local match funds required by the Texas Health and Safety Code, §534.066, other contributions made to an LMHA by private or non-local funding sources, or funding from another state agency, such as the Department of Rehabilitative Services or the Department of Aging and Disability Services.

§412.753. Definitions.

Section 412.753 defines certain words and terms used in the new subchapter.

The term, "external provider," includes all providers other than an LMHA or its direct employees. This definition is at variance with the definition of external providers utilized in the Cost Accounting Methodology (CAM) that LMHAs are required to use in reporting their costs to DSHS. The CAM definition classifies some contract employees as internal providers based on application of criteria regarding the extent to which the LMHA controls the contracted employee's work. After review, DSHS may revise the current CAM definitions to eliminate this discrepancy.

The term, "qualified provider," is defined as (1) an individual practitioner with the minimum qualifications required by the DSHS performance contract and an LMHA's approved local network development plan, or (2) an organization that demonstrates the ability to provide services in accordance with the requirements of the DSHS performance contract. Use of this term is consistent with the requirements of the Texas Health and Safety Code, §533.035(e), under which an LMHA may only serve as a provider of services if the LMHA demonstrates to DSHS that (1) it has made every reasonable attempt to solicit the development of an available and appropriate provider base that is sufficient to meet the needs of consumers in its service area, and (2) there is not a willing provider of the relevant services in the authority's service area or in the county where the provision of services is needed.

An LMHA is not required by the statute to accept any provider that is willing to provide services; it must select providers that are available and appropriate to provide the relevant services, as more specifically addressed in the requirements of Resiliency and Disease Management (RDM), an array of evidence-based disease management practices adopted by DSHS. The DSHS performance contract currently requires each LMHA to implement the requirements of RDM. The RDM Utilization Management Guidelines establish minimum qualification for individual practitioners who are providers of mental health services. In addition, RDM establishes various requirements for providers that are organizations. These include application of a uniform assessment tool to determine the necessary level of care for the client; compliance with Clinical Guidelines that establish service packages for both children and adults that ensure the provision of evidence-based services and guide decisions on eligibility and appropriate discharge from a service package; management of limited resources through established utilization management processes; compliance with the requirements of the DSHS performance contract; compliance with established quality management and data management processes; and maximization of available funding strategies.

Providers who are individual practitioners must meet not only the minimum qualifications established by the RDM Utilization Management Guidelines, but also any additional qualifications required by an LMHA's local network development plan, as provided in this subchapter. For example, bilingual capabilities may be an essential requirement for some staff providing services in areas with large Spanish-speaking populations.

The definition of "service capacity" refers to the number of adults or children/adolescents served, or to be served, for each RDM service package. Service capacity represents consumer distribution among various service packages at a given point in time, based on historical information and projected needs. This definition recognizes that service capacity is not a static number that can be determined in advance; rather, service capacity among service packages will fluctuate based on the clinical needs of consumers. While service capacity must be estimated for planning and procurement purposes, the service system must remain flexible so that it can accommodate the clinical needs of individual consumers who present for services and respond as their needs change over time.

The definition of "stakeholders" encompasses all individuals and organizations who may have an interest in or who may be impacted by the implementation and consequences of these rules and is intended to exclude no one. The specific stakeholder groups named in the definition are those with a clear interest in public mental health services and the assembly of a provider

network to which the LMHA should direct its outreach efforts during the network development planning process.

§412.754. Establishment of a Provider Network.

Section 412.754, relating to Establishment of a Provider Network, references the general requirements of the Texas Health and Safety Code, §533.035(c) for an LMHA to assemble a network of service providers with consideration of public input, ultimate cost-benefit, and client care issues to ensure consumer choice and the best use of public money. The procedures and criteria found in subsequent sections of this subchapter describe how those considerations shall be applied in developing a provider network and determining the LMHA's role as a provider of services.

Public input is specifically required at three points in each two-year network development planning and implementation period. First, LMHAs are required to ensure community involvement and effective participation of stakeholders in the development of the local network development plan. Second, LMHAs are required to seek and respond to public comments regarding the draft plan before submitting their proposed plans to DSHS for approval. Finally, LMHAs are required to provide a period for public comment regarding draft procurement instruments before using them to procure services.

Client care issues are addressed through the requirement that LMHAs and their subcontractors adhere to standards of care established by DSHS, especially those defined in Chapter 412, Subchapter G, of this title, relating to Mental Health Community Services Standards, the RDM system, and through the examination of a potential contractor's past performance.

Consumer choice is addressed through the criteria used to determine an LMHA's status as a service provider, which define a minimum level of consumer choice.

The terms, "ultimate cost-benefit" and "best use of public money," relate to decisions regarding the allocation of public dollars used to fund mental health services, which are provided by and/or through LMHAs (LMHAs may, under certain circumstances, provide services themselves and/or purchase services from external providers). Key decisions in determining how services are provided include the extent and rate at which external providers will provide services and whether or not an LMHA will be a provider of services. Decisions regarding ultimate cost-benefit and best use of public money therefore encompass comparisons between an LMHA and one or more external providers, as well as comparisons among external providers. Ultimate cost-benefit and best use of public money are closely related to "best value," a term commonly associated with procurement activities. Within the context of this subchapter, best value is a specific term applied to procurement decisions made by an LMHA in which the LMHA selects from among competing external providers.

Considerations in determining ultimate cost-benefit and best use of public money parallel those factors used to determine cost value detailed in §412.762(b), which may be broadly summarized as follows: (1) the extent to which the service conforms to established quality standards; (2) the extent to which the service meets the needs of consumers and the local community; (3) the reliability of the provider and the provider's ability to comply with applicable laws, regulations, and standards; (4) the cost of the service; and (5) the ability of the provider to work with other providers and community organizations to provide continuity of care and linkages to community-based support systems. The rules address these considerations through the development of the local network development plan, procurement requirements, application of DSHS rules and standards, and the specific criteria used to determine an LMHA's status as a service provider.

Conformance with established quality standards is addressed through the requirement, which applies to both LMHAs and external providers, that all services adhere to DSHS-established standards of care, especially those defined in Chapter 412, Subchapter G, of this title, relating to Mental Health Community Services Standards, and the RDM system. All providers meeting those standards are qualified to provide services funded through the DSHS performance contract.

The ability to meet consumer needs is also addressed through the RDM standards. In designing the RDM system, DSHS used the best available research evidence to identify those services that are most effective in meeting the needs of DSHS consumers and establish related standards. Local needs are currently defined in the local service area plan and, under the rules will be defined in the local network development plan; both of these are developed with input from consumers and other stakeholders. The ability to meet consumer and local needs is also addressed in §412.758, relating to LMHA Provider Status, which requires a provider to demonstrate the ability to provide consumers with access to services that is equivalent to or better than that provided by an LMHA.

The reliability of the provider is addressed through the flexibility afforded to LMHAs and the local communities they serve in determining not only the percentage of service capacity that will be procured, but also the time frame within which such services will be procured. By designing a phased transition to service delivery by external providers, an LMHA can evaluate the ability of an external provider to fulfill its contractual obligations over an extended period of time. Reliability of the provider is also a factor considered in procurement; an LMHA is not required to procure services from a respondent if the LMHA has documented evidence that the provider has a clear and recent history of failing to fulfill its contractual obligations.

Cost of services is addressed through the procurement process. It is reasonable to assume that best use of public money is not achieved if an LMHA contracts for a service equivalent to that which it can provide but at a significantly higher cost, thus reducing the quantity of services that can be provided to consumers. Therefore, an LMHA may reject proposals from external providers during procurement based on a determination that it can deliver the service at a lower cost, provided that the procurement instrument specifies the maximum allowable rate for which the LMHA will contract for the service. However, the maximum allowable rate must include all expenses related to providing the service.

The ability of the provider to work with other providers and community organizations to provide continuity of care and linkages to community-based support systems is addressed through the requirement that all services adhere to DSHS-established standards of care, especially those defined in Chapter 412, Subchapter G, of this title, relating to Mental Health Community Services Standards, and the RDM system; this requirement applies to both LMHAs and external providers.

§412.756. Local Network Development Plan.

Section 412.756, Local Network Development Plan, requires each LMHA to develop a local network development plan that reflects local needs and priorities and maximizes consumer

choice and access to services. DSHS will establish a biennial schedule for submission of plans, which is consistent with the statutory requirement for DSHS to review an LMHA's status as a service provider every two years. In establishing the schedule, DSHS may require some LMHAs to submit plans earlier than others, to achieve a staggered review cycle and refinement of the tools and procedures used in the implementation. However, every LMHA will have at least 180 days to develop its plan.

LMHAs are currently required to develop local service area plans using established guidelines on an annual basis. The planning process required under this subchapter is not intended to be a separate activity completed in isolation of other planning efforts. DSHS will work closely with the Department of Aging and Disability Services to review existing planning guidelines and revise them to reflect current conditions, including the requirements of these new rules. DSHS anticipates that, under revised guidelines, the local network development plan will become the primary component of the mental health portion of the local service area plan.

Under subsection (c) the process used to develop the plan must ensure effective participation by stakeholders, including the LMHA's Planning and Network Advisory Committee. This ensures that the planning process required under this subchapter is integrated with existing planning efforts at the local level and includes substantial input from consumers and family members as well as other stakeholders.

Subsection (d) states that DSHS will develop a list of interested providers for each local service area. DSHS will provide a website listing minimum RDM services requirements and, for each local service area, service capacity and funding information. Providers will have an opportunity to submit a description of their qualifications and experience and indicate their interest in providing services in each local service area, and DSHS will post provider responses. This process is made available as a convenience to providers, who will be able to indicate their interest in various areas of the state through a single submission, and to LMHAs, who can use the information to help them determine whether or not procurement is feasible. The list cannot be viewed as a definitive measure of the number of willing and qualified external providers; that can only be determined through actual procurement or through further inquiry by an LMHA, as described below. However, it can indicate a general level of interest and provide LMHAs with a starting point for collecting additional information. The list is one source of information the LMHA will use to assess the potential for acquiring services through external providers. While the absence of providers indicating interest in a particular local service area may be the primary basis for an LMHA to conclude that procurement is not feasible, the presence of providers indicating interest would not be considered conclusive evidence of a sufficient pool of interested providers to require procurement.

Subsection (f) requires LMHAs to maximize dollars available to provide services and specifies strategies an LMHA must consider in doing this, including joint efforts with other local authorities on planning, administration, purchasing and procurement, other authority functions, and service delivery activities. This language is consistent with legislative direction and recognizes that LMHAs may achieve economies of scale by working together. Some LMHAs are already engaged in such activities, but additional opportunities may be found as LMHAs expand their use of external providers. More extensive use of external providers will require development or strengthening of procurement, contracting, and oversight functions while at the same time decreasing activities and administrative functions related to direct service delivery. The rule directs LMHAs to examine options for minimizing overhead and administrative costs and achieving purchasing efficiencies, which may include adoption of new business models and increased collaboration with other LMHAs.

The elements that must be included in a local network development plan are itemized in subsection (g). These include a description of the planning processes and participants, projected service capacity, and baseline data showing the type and quantity of services provided by the LMHA and by external providers. DSHS will define how baselines are to be determined, which may involve information extracted from the DSHS data warehouse or supplemental inventories.

Subsection (g)(5) requires the plan to include a summary of past inquiries received by the LMHA from external providers and the LMHA's responses. This includes inquiries regarding traditional contracting arrangements as well as requests that the LMHA consider alternative proposals such as regional service delivery models covering more than one local service area.

According to subsection (g)(6), the LMHA must present its assessment of the external provider market, and state whether or not it will assemble or expand its external provider network by service type and population served. The RDM model has multiple levels or packages of services for adults and for children/adolescents. External providers may or may not offer a comprehensive array of services, so procurement decisions must be made individually in relation to each service package for each population.

Subsection (g)(7) requires the plan to include a clear rationale for the decisions regarding network assembly or expansion consistent with the LMHA's assessment of the external provider market. If the LMHA is currently providing a service, the presumptive expectation is that the LMHA will seek to establish or expand its external provider network through procurement. Under these circumstances, a decision not to procure the service must be based on one or more of the conditions listed in §412.758(a). These conditions include a determination that interested qualified providers are not available to provide services in the LMHA's service area. If the LMHA is not currently providing the service and has a network of external providers, the LMHA may or may not choose to initiate procurement. In this situation, a decision not to procure the service may be based on the rationale that the existing external provider network provides 100% of the service capacity and meets minimum standards of consumer choice and access. However, the LMHA should consider, among other factors, the length of time since it last procured the service and the benefits of opening the network to introduce competition or to expand capacity, access, and/or consumer choice. If the plan includes service provision by the LMHA, the rationale must identify and support the volume of services that must be provided by the LMHA as required in §412.758(f).

Under subsection (g)(8), if the LMHA decides to assemble or expand the external provider network, the network development plan must describe the LMHA's plans for procurement, including the services and combinations of services to be procured, the capacities to be procured, and the methods and timelines for procurement. An LMHA may "bundle" certain services for procurement so that a provider who wants to offer any one of the bundled services must offer all of them. This may be done for a number of reasons. For example, certain consumers may be expected to use multiple services, and having those services

available from a single provider might enhance continuity of care. Also, it may not be economically advantageous to provide a specific service, and it might be necessary to combine that service with a more profitable one to attract external providers.

The description of procurement plans must also address steps and timelines for securing consumer choice decisions and transitioning consumers to new providers. According to procedures delineated in §412.760, Consumer Selection of Providers, the distribution of consumers across the provider network is consumer-driven. No provider is assured of receiving a minimum number of consumers or proportion of service capacity. Furthermore, the procedures allow for a gradual transition to facilitate clinically appropriate transfer planning and continuity of care for consumers moving from the LMHA as a provider to an external provider.

An estimate of the time needed for the LMHA to reestablish service volume lost should a contract be terminated must also be included in the description of procurement plans. The LMHA may use the estimated time required to reestablish lost service volume as a minimum notice period for contract termination by an external provider. While a contract provision does not guarantee that a provider will not abruptly terminate services, it does establish an expectation and a measure of what is necessary for a contacted external provider to leave the network in good standing. This timeframe is also relevant to determinations regarding the protection of critical infrastructure, as addressed in §412.758(a)(5).

Finally, procurement plans must state any additional qualifications that an LMHA will require of individual practitioners in addition to those described in the DSHS performance contract. This provision allows the LMHA to hold external individual practitioners to the same standard applied to the LMHA's employees.

Subsection (g)(9) and (10) require the local network development plan to include a description of how the LMHA will address consumer choice and access and must identify any services to be provided by a single provider due to economic factors that prevent an LMHA from offering consumers choice of more than one provider. For example, it may not be economically feasible to establish more than one Assertive Community Treatment team in a local service area. In some cases, a consumer might have a choice of individual practitioners within the team, but not a choice of teams.

Another element of the plan, required in subsection (g)(11), is a description of how service dollars will be preserved while maintaining the LMHA's ability to continue performing authority functions and administrative services related to the authority functions. This description must include the LMHA's strategies for minimizing overhead and administrative costs and achieving purchasing efficiencies as required in subsection (f), which directs LMHAs to consider joint efforts with other LMHAs. Producing this section of the plan will require the LMHA to clearly identify administrative costs associated with service delivery versus those supporting authority functions. Moving from direct service delivery to a system in which the LMHA's primary role is assembly and maintenance of an external provider network will change the scope and nature of its activities. Under a direct service delivery model, the LMHAs may have achieved certain economies through shared administrative services that support both authority and service delivery functions. As an increasing proportion of services are contracted out, those economies may diminish and require alternative business models to avoid shifting dollars away from service delivery to support authority and related administrative functions.

Additional elements required in the plan in subsection (g)(12) - (14) address cultural and linguistic diversity issues, past efforts to develop an external provider network, and a description of barriers to attracting new external providers and conditions that must be present to attract new external providers to the local services area, as well as the LMHA's plans to address any identified barriers. While the LMHA does not have an obligation to create an artificial market through inflated rates or other financial incentives, it is expected to consider any reasonable steps that might be taken to attract new providers to the area. For example, if the LMHA is able to provide services in outlying areas because local government provides free office space for service delivery on a part-time basis, securing permission for external providers under contract with the LMHA to have similar access to free office space might be sufficient to attract external providers to an area that might otherwise be financially unsupportable. Reasonable steps might also include collaborating with neighboring LMHAs to create a regional service delivery system or to provide certain resource-intensive services on a regional basis. If identified barriers include existing agreements or circumstances identified by the LMHA pursuant to §412.758(a)(6), the LMHA must indicate whether it is possible to make modifications to expand opportunities for external provider participation. For example, an LMHA may have an agreement with city and county health departments through which the agencies share a single facility in a central location to provide "one-stop" healthcare services to the local community. While the written agreement may specify that the LMHA is to provide the mental health services, it may be possible to modify the agreement to allow mental health services to be provided by an external provider under contract with the LMHA.

Finally, subsection (g)(15) requires the LMHA to describe its plans for network development for at least an additional two years. While this information does not need to be as detailed as the information presented for the two years covered by the plan, it should be sufficient to provide context and give a general indication of the scope and rate of development anticipated.

Subsection (h) requires the LMHA to send its draft local network development plan to local consumer and advocacy groups and make it available to the public through its website and other accessible media, invite public comment, consider all comments received, and make any revisions it deems appropriate in response to the public comment. The public comment required in the planning process is a critical element in the structure of the subchapter. By requiring a period of public comment on the LMHA's draft plan, all stakeholders have an opportunity to review the plan, identify any elements that might be inconsistent with the provisions of this subchapter, and suggest changes reflecting their interests. Specific notice to consumer and advocacy groups ensures that key stakeholders are aware of the plans publication and can exercise their rights to review and provide comment. While the LMHA is not required to accept every comment and make corresponding changes to its plan, rejection of a comment does obligate the LMHA to articulate a reasoned justification for its decision that will be subject to review by DSHS.

Subsection (i) requires the LMHA to submit its proposed local network development plan to DSHS together with a summary of the comments it has received and the LMHA's response to the comments. If the LMHA has made revisions to its plan, it must update its website with the revised version.

Subsection (j) describes DSHS's review of local network development plans. DSHS will review the content of the plan to evaluate the LMHA's level of effort, its rationale for decisions and plans, and the extent to which it has implemented previous plans and made progress towards assembly of an external provider network. Particular attention will be given to stakeholder comments and the LMHA's responses to those comments. DSHS may request additional information from the LMHA if the initial submission does not provide sufficient information for DSHS to complete its evaluation.

The diversity of circumstances across the state precludes application of a single standard, so review of local plans will be conducted with consideration to the specific context of the local service area. For example, rural and frontier counties may not have a sufficient population base to attract external providers, and in those areas it is reasonable to expect that the LMHA may continue to be the primary or only provider of mental health services for the foreseeable future. However, as noted previously, these LMHAs are still required to identify and address the barriers to assembly of an external provider network, such as exploring alternative service models and other arrangements that might attract external providers to the area. In urban areas, the opportunities for and supply of external providers will be far greater, facilitating more extensive and rapid expansion of external provider networks. An LMHA in an urban area that does not demonstrate significant progress in assembling an external provider network will be subject to close examination by DSHS. While there may be legitimate circumstances and barriers that fall under a condition articulated in §412.758(a), the LMHA will be expected to provide clear, documented evidence justifying the condition.

DSHS will establish a mechanism for stakeholder involvement in the review process. This mechanism will not be restricted to passive receipt of comments but will provide an opportunity for stakeholders to have meaningful input during the review process. To ensure stakeholder input is not restricted to organizations and individuals represented in Austin, DSHS will explore use of teleconferencing and other available technology to facilitate interaction with stakeholders at both the state and local level.

If DSHS, with input from stakeholders, determines that an LMHA's local network development plan demonstrates the LMHA is in compliance with this subchapter and is making reasonable attempts to develop an external provider network, it will approve the plan. To ensure timely review, the rule specifies that DSHS will approve an acceptable plan within 60 days of receipt. If the plan is deemed to be unacceptable, DSHS will require the LMHA to revise the plan prior to approval. Final approval of a plan requiring revisions is not required to be completed within the 60-day time frame.

Under subsection (k), LMHAs are required to update public postings with their approved network development plans. To promote widespread accessibility, subsection (l) states that DSHS will have a mechanism on its website linking to each of the LMHA websites so that stakeholders can access all approved local plans through a single portal.

Subsection (m) anticipates that the results of procurement are unpredictable and may not conform to an LMHA's local network development plan. For example, the plan may state that the LMHA will contract with external providers for all services, but the procurement may fail to elicit responses from qualified external providers for certain services. In such cases, the LMHA must submit a plan amendment to DSHS and update all electronic or print copies of the plan that it has publicly posted, after receiving approval of the amendment from DSHS.

§412.758. LMHA Provider Status.

Section 412.758, LMHA Provider Status, addresses the LMHA's status as a provider of services. The Texas Health and Safety Code, §533.035(e) states that an LMHA may serve as a provider of services only as a provider of last resort, and only if the LMHA demonstrates to DSHS that (1) it has made every reasonable attempt to solicit the development of an available and appropriate provider base that is sufficient to meet the needs of consumers in its service area, and (2) there is not a willing provider of the relevant services in the authority's service area or in a portion of the area where the provision of the services is needed. Subsection (a), which sets out the conditions under which an LMHA is authorized to be a provider of services, outlines the circumstances under which an LMHA can meet these statutory criteria. These conditions constitute the sole basis for justifying continued service provision; an LMHA may not rely on other factors to justify maintaining its status as a service provider. In making the determination, each service package for adults and children/adolescents must be considered separately. An LMHA's authority to provide services under any of these conditions is limited to the two-year period covered by the local network development plan.

Subsection (a)(1) states that an LMHA may provide services if it determines that interested qualified providers are not available in the local service areas or that no providers met procurement specifications. While procurement is the only method through which an LMHA can positively determine that a provider is qualified, information showing that a provider is not qualified may be available before a decision is made whether or not to initiate procurement. Under §412.756(d), providers have an opportunity to submit a description of their qualifications and experience to be posted on the DSHS list of interested providers. That information alone may be sufficient to establish that a provider lacks the necessary qualifications. For example, a provider with insufficiently credentialed staff and no history of providing mental health services similar to those defined in the RDM services packages is clearly not qualified. This condition may also exist based on the results of procurement when no qualified providers respond or when qualified providers fail to meet additional minimum requirements of the procurement. For example, a qualified provider may propose to provide services at a rate that exceeds the maximum rate specified in an RFP, or may have a clearly documented history of noncompliance.

Subsection (a)(2) allows an LMHA to provide services in order to offer consumers a minimum level of consumer choice. A minimal level of consumer choice is present when consumers can choose from two or more qualified provider organizations in the LMHA's provider network for service package and from two or more qualified individual practitioners in the LMHA's provider network for specific services within a service package. Therefore, an LMHA may continue to provide services if there is only one external provider, even when that provider is able to meet 100 percent of service capacity. Consumer choice is limited to providers within the LMHA's network at any given time; consumer preference does not require specific providers to be included or maintained in the network so that consumers can choose a particular provider. Furthermore, consumer choice may be limited by availability. Because a network has limited capacity, there may be times when only one provider is able to accept new clients. These limitations on consumer choice are consistent with industry standards for both public and private healthcare networks.

Subsection (a)(3) addresses situations in which external providers are unable to offer access to services that is equivalent to or better than access provided by the LMHA. Access has multiple components, including timeliness and geographic proximity. DSHS has established standards for timeliness that are applicable to all providers, but equivalent standards do not exist for geographic proximity. Services should be located so that the greatest number of consumers can reach the service site without undue hardship. This issue is particularly critical in service areas with rural and frontier counties, where service sites must be strategically located to maximize consumer access. After procurement, an LMHA may find that the proposed service locations force a significantly greater number of consumers to travel long distances in order to access services, which would justify the LMHA continuing to provide services. When making this determination, the LMHA should consider all service sites proposed by a potential provider, including sites borrowed from another entity on a full time or part time basis, as well as any alternative service model, such as telemedicine, proposed by a respondent. An LMHA relying on this condition must submit geographical access information to DSHS for verification. DSHS will measure access by using the latest healthcare access technology available to the agency, such as geomapping, thus providing an objective means of comparing the level of geographic access offered by various network configurations with and without participation by the LMHA. A provider's hours of operation may also relate to consumer access to services. However, because it may be more difficult to objectively measure a provider's hours of operation in comparison to those of an LMHA, this factor would be more appropriately addressed by the LMHA as a minimum requirement in any procurement document it issues.

Subsection (a)(4) recognizes that an LMHA may be unable to procure sufficient volume to meet 100 percent of the service capacity. In those cases, the LMHA may provide the balance of the service capacity. When necessary, subsection (f) allows the LMHA to reduce the volume of services provided through contract so that it can retain a sufficient volume of services to be financially viable.

Subsection (a)(5) allows an LMHA to provide services when necessary to protect critical infrastructure to ensure continuous provision of services. Specifically, this condition permits the LMHA to implement a phased transition to an external provider network by procuring an increasing proportion of service capacity over a period of time defined by the LMHA. At the end of this transition period, the LMHA must give up its role as a service provider if it determines that qualified external providers are willing and able to provide sufficient added service volume within the timeframe specified by the LMHA in its local network development plan.

Critical infrastructure is protected when external providers can be relied upon to provide 100 percent of the service capacity indefinitely without significant disruption. This includes the willingness and ability of external providers to provide sufficient added service volume in a timely manner (defined by the LMHA in its network development plan) if one or more providers leave the network. This may be achieved by existing providers increasing their service volume or through emergency procurement of additional providers. The ability to determine not only the proportion of services to be procured for each two-year period, but also the timeframe over which the transition to an external provider network will occur, enables the LMHA to verify the reliability of the external provider network and the greater external provider market. Reliability may be judged through experience or through an assessment of relevant factors such as current providers' infrastructure, past performance, and expressed willingness to provide additional service volume, as well as the market response to past procurements.

Subsection (a)(6) encompasses situations in which existing agreements impose restrictions on an LMHA's ability to contract with external providers or existing circumstances would result in the loss of a substantial source of revenue that supports service delivery if the LMHA did not provide services; specific examples are provided. Substantial revenue is an amount that would support a material volume of client services. These provisions apply to agreements regarding in-kind contributions, such as utilization of a building, as well as direct financial assistance.

The existence of such agreements or circumstances does not allow an LMHA to remain in the role of service provider for an indefinite period of time. A separate determination must be made in each two-year planning cycle, and the LMHA is expected to investigate options for modifying the agreements or circumstances to allow participation by external providers. Examples include an agreement requiring direct service provision by the LMHA that might be amended to allow subcontracting, and a building owned by the LMHA that may be sold or leased over time. The rule recognizes that funders and other contractual partners may not allow such modifications, but the LMHA is obligated to explore the possibility.

Subsection (b) authorizes an LMHA to provide services during the two-year period if it determines, based on the rationale provided in its approved local network development plan, that it will not assemble or expand the external provider network because of one or more of the conditions identified in subsection (a). If the condition(s) apply to only certain services, the authorization is limited to those specific services.

Subsection (c) states that an LMHA is not authorized to provide services during the two-year period covered by an approved local network development plan if it determines, based on the rationale provided in its approved plan, that it will not assemble or expand the external provider network because its current network of external providers delivers 100 percent of the service capacity and meets levels of consumer choice and access specified in §412.758(a)(2) and (3), relating to LMHA Provider Status.

Subsection (d) recognizes that an LMHA's status as a provider cannot be definitively determined prior to a planned procurement; the decision must be based on the results of the procurement as well as the approved local network development plan. If the results of the procurement are not consistent with the LMHA's intended status as a provider described in the approved plan, the LMHA must submit a plan amendment to DSHS for approval.

Subsection (e) clarifies that an LMHA is not required to breach existing contracts or to lose or forego substantial revenue that supports the provision of services in order to comply with the provisions of this subchapter. LMHAs are required to give prospective funders information about the intent and requirements of this subchapter and are prohibited from conditioning receipt of funds upon direct service provision by the LMHA. The rule does, however, recognize that funders have the right to make policy decisions regarding use of their funds. If a funder receives the information about the state's intent for LMHAs to establish external provider networks and still chooses to require direct service provision by the LMHA, the LMHA is permitted to accept the funds. Also, the restrictions of subsection (e) do not apply to grants, gifts, or other funding sources that do not involve the use

of "department federal or department state funds" disbursed to an LMHA by DSHS.

Subsection (f) applies when the LMHA provides services under one or more of the conditions in subsection (a). In such situations, the LMHA must identify the proportion of service capacity that it must provide in order to make service provision financially viable and provide the rationale for the decision. For example, an LMHA may be able to procure only 95 percent of the service capacity for a given service. Under subsection (a)(4), the LMHA would be authorized to provide services. However, the LMHA may find that it is not financially viable to provide only five percent of the service capacity. An example of this would be if the scope of the LMHA's direct service delivery would be reduced to the extent that certain staff or other resources must be retained in order to provide the service but the low volume of service results in idle capacity. Under such circumstances, the LMHA may calculate the proportion of service capacity necessary to fully utilize its resources and reduce the service capacity allowed from external providers by a commensurate amount.

§412.760. Consumer Selection of Providers.

Section 412.760 describes the process that will be used by LMHAs to provide consumers and legally authorized representatives with the information and opportunities necessary to exercise consumer choice.

Subsection (a) requires the LMHA to maintain a list with the most current information available about each provider in its network, including the provider's name, service locations, contact information, website address, and languages in which services are available. If the LMHA is a provider of services, the list must include the same information for the LMHA provider as for external providers. The number of required elements is minimal, and excludes items subject to frequent change to promote maintenance of accurate and current information that can be presented in a simple, easy-to-use format. The list is intended to be an objective source of comparable information about each provider, including how a consumer can obtain more detailed information. The LMHA is required to post the list on its website and distribute it at least annually to local consumer and advocacy groups.

Providers are free to engage in additional consumer and stakeholder education efforts using their own resources, but the LMHA is not required to distribute brochures or other materials supplied by external providers. The role of the LMHA is to provide consumers with accurate and consistent information about providers so that no provider has an advantage in the official presentation of information. Each provider is responsible for its own marketing.

Subsection (b) requires the LMHA to provide forums through which providers can present information to consumers and other stakeholders. Such forums might include presentations at advocacy group meetings, open houses, or participation in community health fairs. These forums are intended to provide consumers and stakeholders with more in-depth information and an opportunity to ask questions of various providers.

Under subsection (b), LMHAs have defined but limited responsibilities for providing consumers and other stakeholders with information about providers consistent with the level of resources available to the LMHA to perform authority functions, including consumer education. The requirement to distribute the provider list to consumer and advocacy groups is based on the expectation that these groups will play an active role in disseminating consumer information and providing consumers with support and assistance.

Subsection (c) describes the process through which consumers select their providers. The LMHA is required to provide consumers and legally authorized representatives with a copy of the provider list. New consumers receive this information after the LMHA conducts an assessment and recommends services based on the results of the assessment. The LMHA is also required to provide a description of the array of service options for which the consumer may be authorized. In describing the array of service options available to the consumer, the LMHA is expected to offer or allow a consumer to choose only some of the services for which the consumer may be authorized; a consumer is not required to accept all services for which he or she may be authorized.

The LMHA must provide the consumer or legally authorized representative with the list of providers offering services for which the consumer may be authorized and inform them that they have the right to choose from among available providers and may change providers. The LMHA must make a telephone and appropriate space available for consumers to use in selecting a provider. This is to support consumers in making an informed and timely selection and to facilitate linking the consumer with the chosen provider. If the consumer does not wish to choose a provider at the time of the assessment, the LMHA must give consumers a reasonable period of time to make a decision and cannot demand that a selection be made at the time of the assessment.

If the consumer does not make a selection within the designated time frame, the LMHA shall assign a provider, with assignment rotating equally among all available providers. Available providers are those offering the required service who have sufficient capacity to accept new clients. Consumers are not required to contact the LMHA stating their choice of provider; they may indicate choice by contacting a provider directly. An LMHA can identify consumers who have not selected a provider within the designated time frame by generating a list from the Client Assignment and Registration (CARE) system of clients who have been assessed but for whom no subsequent service authorization has been requested.

All consumers and legally authorized representatives shall be given the current provider list and be offered the option of choosing a different provider at every scheduled treatment plan review. This is a mechanism through which consumers can learn about new providers and be reminded that the option to change providers remains available. Consumers are allowed to change providers at any time subject to approval by the LMHA. The rule does not restrict the frequency with which a consumer may change providers, but the LMHA may impose some restrictions based on the clinical appropriateness of the request within the context of the utilization management authorization process. Excessive movement from one provider to another may not be in the best interest of the consumer and may indicate the need for clinical intervention. Consumers may request a review of LMHA decisions under the existing notification and appeals process described in §401.464 of this title.

LMHAs are required to maintain documentation of the consumer's or legally authorized representative's provider selection. This includes documentation at every scheduled treatment plan evaluation as required in subsection (c)(6) of this section.

§412.762. Procurement Principles.

Section 412.762, related to Procurement Principles, describes standards that govern all procurement activities undertaken by the LMHA in assembling and expanding an external provider network.

Subsection (a) requires an LMHA to comply with applicable rules and statutes and clarifies that an LMHA may procure mental health services required by the DSHS performance contract and the LMHA's approved local network development plan by any procurement method allowed by applicable statutes and rules that provides the best value to the LMHA.

This subchapter includes procedures for two methods that are likely to be used extensively in the procurement of mental health services by an LMHA: Request for Proposal and Open Enrollment. An alternative competitive procurement method is informal solicitation, which may be used to competitively procure services when the contract amount will not exceed $25,000. Certain non-competitive procurement methods may be used in situations described in §412.59 of this title (relating to Non-competitive Procurement of Community Services). These include sole source procurement, which may be used when the services are proprietary to a single source or only one source can or is willing to provide the service; procurement from a governmental entity; emergency procurement, which may be used in an emergency situation in which a delay may result in harm to a consumer; procurement of services for less than $5,000; and procurement following an unsuccessful competitive procurement process. These processes are not specifically addressed in the subchapter because it is anticipated that their use will be relatively rare in the purchase of mental health services.

The list of relevant factors used in determining best value in subsection (b) is a compilation of factors from the Texas Health and Safety Code, §533.016(c) and §534.055(f), which an LMHA considers when determining best value. Minor changes have been made to eliminate redundancy and wording applicable only to goods rather than services. Subsections (c) and (d) require that all competitively procured contracts and any renewals of mental health services contracts be based on best value, as determined by considering all relevant factors listed in subsection (b).

§412.764. Request for Proposals.

Section 412.764 describes procedures for competitive procurement using the request for proposal (RFP) method.

Under paragraph (1) LMHAs choosing the RFP procurement method are responsible for developing a draft RFP to ensure public input. The rule requires the draft RFP to include all elements required by applicable statutes, rules, and procurement standards as well as other elements related to transitioning to external providers and providing for consumer needs.

In the local network development plan required under §412.756, Local Network Development Plan, LMHAs must specify steps and timelines for transitioning consumers to new providers. These goals must be included in the draft RFP to inform potential respondents about the processes through which consumers will select a provider and, when applicable, transition to a new provider. In responding to the RFP, respondents are required to describe how they intend to implement those transition goals. If the LMHA expects external providers to consider or give hiring preference to LMHA employees who will lose their jobs as a result of procurement, this must be stated in the RFP.

The draft RFP requires respondents to describe how they will involve consumers, legally authorized representatives, and families at the policy and practice level. A key goal underlying the provisions of this subchapter is to empower consumers, their legally authorized representatives, and family members and promote their active involvement in the development of the mental health service system as well as their individual treatment and recovery. Providers may address this requirement by establishing special consumer advisory, planning, and review committees or by appointing consumers to such committees; utilizing consumers in staff orientation and training; involving consumers in the development of information given to consumers, staff, and members of the public; formalizing processes to solicit and respond to consumer comments and suggestions; and establishing other mechanisms through which consumers can contribute to the development and/or review of organizational policies and practices. The rule does not require responders to use a particular process or to implement suggestions received from consumers.

Respondents will also be required to specify where and when services will be provided within the LMHA's local service area. Services locations and hours of operation are important components of consumer access that must be considered in the assembly of a provider network. If the post-procurement network reduces consumer access to services, §412.758, LMHA Provider Status, allows the LMHA to provide services as part of the provider network. Sites identified by respondents in their proposals will be the basis for making this determination and may be submitted to DSHS.

An additional element that an LMHA must include in its draft RFP is the maximum allowable rate for the services being procured if the LMHA intends to reject any proposal with a rate exceeding that amount.

Paragraph (2) requires the LMHA to publicize the draft RFP, solicit public comment, and invite potential providers to describe the challenges in providing services in the LMHA's local service area. In addition to posting the draft RFP on state and local websites, the LMHA is required to send the draft RFP to interested providers and local consumer and advocacy organizations. Interested providers include those who have contacted the LMHA and those identified through the DSHS website referenced in §412.756(d). This ensures that known stakeholders most impacted by the results of procurement are aware that the draft RFP is available for review. Publication of the draft RFP also provides an avenue for soliciting more general feedback from potential providers about barriers and challenges in providing services; this information may be useful to the LMHA in developing subsequent local network development plans.

The development and publication of a draft RFP allows potential respondents and other stakeholders to review the content and evaluate whether the proposed specifications are consistent with the requirements of this subchapter and encourage assembly and expansion of an external provider network. It also establishes a way for stakeholders to challenge specific provisions and suggest revisions to the draft RFP, which may result in a more successful procurement and reduce subsequent challenges and protests.

Paragraph (3) requires the LMHA to consider all public comments it receives in developing the final RFP and lists additional elements that must be included. Paragraphs (4) and (6) - (11) describe additional requirements for conducting a procurement using the RFP method. Paragraph (7) permits minor changes to be made to the final RFP by the LMHA provided that everyone who has already obtained the final RFP is notified of the changes

and is provided equal opportunity to respond. This provision is intended to allow for corrections or clarifications to be made to the final RFP; however, it would not allow changes such as a modification to the type(s) or volume of services to be procured or the maximum allowable rate for the services to be procured, which are considered more substantive in nature and would require the LMHA to re-publish the amended RFP as a draft RFP to ensure public input on the LMHA's new or amended requirements. Requirements related to developing and publishing an RFP Notice and making an award come from §412.58(2)(B)(i) and (2)(C) of this title (relating to Competitive Procurement Methods for Community Services), which currently applies to LMHAs.

Paragraph (5) clarifies that an LMHA may not submit a proposal in response to its own RFP. The procurement process is used to make comparison among external respondents. The only mechanism in the RFP process for a comparison between the LMHA as a provider and an external provider is in the development of minimum specifications or requirements, which may reflect specific aspects of the LMHA's service delivery, such as hours of service or price.

§412.766. Open Enrollment.

Section 412.766 describes procedures for procurement using the open enrollment method.

Under paragraph (1) LMHAs choosing the open enrollment procurement method are responsible for developing a draft request for applications (RFA) to ensure public input. The rule requires the draft RFA to include all elements required by applicable statutes, rules, and procurement standards as well as other elements related to transitioning to external providers and providing for consumer needs.

A critical element in the RFA is the rate of payment for the services that an applicant must agree to accept. The LMHA is responsible for including in the RFA the method it used to determine that rate of payment.

The LMHA must include in the draft RFA a detailed description of the LMHA's minimum requirements for a provider of the services to be procured. These minimum requirements must include requirements related to the cultural and linguistic needs of the consumers in the LMHA's local service area; the involvement of consumers, legally authorized representatives, and families at the policy and practice levels within the applicant's organization or individual practice; transition goals for LMHA employees, if applicable; a transition plan for consumers; and location and hours of services. Additionally, the draft RFA requires the applicant to include information demonstrating how the applicant will meet the minimum requirements.

Paragraph (2) requires the LMHA to publicize the draft RFA, solicit public comment, and invite potential providers to describe the challenges in providing services in the LMHA's local service area. In addition to posting the draft RFA on state and local websites, the LMHA is required to send the draft RFA to interested providers and local consumer and advocacy organizations. Interested providers include those who have contacted the LMHA and those identified through the DSHS website referenced in §412.756(d). This ensures that known stakeholders most impacted by the results of procurement are aware that the draft RFA is available for review. Publication of the draft RFA also provides a mechanism for soliciting more general feedback from potential providers about barriers and challenges in providing services; this information may be useful to the LMHA in developing subsequent local network development plans.

The development and publication of a draft RFA allows potential respondents and other stakeholders to review the content and evaluate whether the proposed specifications are consistent with the requirements of this subchapter and encourage assembly and expansion of an external provider network. It also establishes a way for stakeholders to challenge specific provisions and suggest revisions to the draft RFA, which may result in a more successful procurement and reduce subsequent challenges and protests.

Paragraph (3) requires the LMHA to consider all public comments it receives in developing the final RFA and lists additional elements that must be included. Paragraphs (4), (6), (7), and (8) describe additional requirements for conducting a procurement using the open enrollment method. Most provisions related to developing and publishing an RFA Notice and making an award come from §412.60(b)(1) and (c) of this title (relating to Open Enrollment), which currently applies to LMHAs.

Paragraph (5) clarifies that an LMHA may not submit an application in response to its own RFA. Paragraph (9) states that for every service procured through open enrollment after the effective date of this subchapter, the LMHA must, at least every two years, procure the service using the same RFA developed in accordance with paragraphs (1) - (3); procure the service using another RFA developed in accordance with paragraphs (1) - (3); or procure the service using another procurement method.

COMMENTS

No comments were received regarding the adoption of the new sections.

LEGAL CERTIFICATION

The Department of State Health Services, Deputy General Counsel, Lisa Hernandez, certifies that the rules have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The new sections are authorized by the Texas Health and Safety Code, §533.035(a), which requires the Executive Commissioner to designate an LMHA in one or more local service areas; §533.035(b), which authorizes DSHS to disburse to LMHAs funds to be spent in the local service area for community mental health services and chemical dependency services for persons who are dually diagnosed as having both chemical dependency and mental illness; §533.035(c), which requires LMHAs to use the funds received from DSHS to ensure that mental health services are provided in the local service area; §533.035(d), which requires LMHAs to consider public input, ultimate cost-benefit, and client care issues to ensure consumer choice and the best use of public money in assembling a network of service providers and making recommendations relating to the most appropriate and available treatment alternatives for individuals in need of mental health services; §533.035(e), which requires an LMHA to serve as a provider of services only as a provider of last resort and only if the LMHA demonstrates to DSHS that the LMHA has made every reasonable attempt to solicit the development of an available and appropriate provider base that is sufficient to meet the needs of consumers in its service area and there is not a willing provider of the relevant services in the LMHA's service area or in the county where the provision of the services is needed; and §533.035(f), which requires DSHS to review the appropriateness of an LMHA's status as a service provider at least biennially. The new sections

are also authorized by the Texas Government Code, §531.0055, and the Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of the Texas Health and Safety Code, Chapter 1001.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702485
Lisa Hernandez
Deputy General Counsel
Department of State Health Services
Effective date: July 5, 2007
Proposal publication date: March 16, 2007
For further information, please call: (512) 458-7111 x6972

CHAPTER 419. MENTAL HEALTH SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES
SUBCHAPTER J. INSTITUTIONS FOR MENTAL DISEASES

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts amendments to §§419.371, 419.373 - 419.377, and 419.379, and the repeal of §419.372 and §419.378, concerning Institutions for Mental Diseases (IMD), without changes to the proposed text as published in the March 23, 2007, issue of the *Texas Register* (32 TexReg 1706) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The department is authorized to administer the Texas Medicaid IMD program. The rules in this subchapter describe the criteria used to determine whether an IMD provider is eligible to receive Medicaid reimbursement for inpatient hospital services provided to people aged 65 and older in an IMD. They describe the methods by which IMD provider eligibility is established and reimbursement for covered services is accomplished, and the standards for which IMD providers will be held accountable. The amendments and repeals are necessary to update statutory and other references, to ensure consistency with current law and best practices, and to provide greater clarity to the rules.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 419.371 - 419.379 have been reviewed and the department has determined that reasons for adopting these sections continue to exist because rules on this subject are needed, with the exception of §419.372 and §419.378, which are repealed.

SECTION-BY-SECTION SUMMARY

Amendments to §419.371 include incorporating the language from §419.372 and changing the title to Purpose and Application, and §419.372 is repealed.

An amendment to §419.373 is adopted for the definition of "Mental diseases," to delete reference to a specific edition of the International Classification of Diseases and to add reference to the Diagnostic and Statistical Manual of Mental Disorders in order to define the term as an inclusive and up-to-date listing of relevant diagnoses.

An amendment to §419.375(c) eliminates the requirement that an IMD provider be given a maximum of 48 hours notice before a review. The department is authorized under Health and Safety Code, §533.015, to make any inspection of a facility or program under the department's jurisdiction without announcing the inspection. The change is necessary to afford staff sufficient flexibility to accomplish the reviews, and the rule would not prohibit the department from continuing to provide notice.

Additional amendments to §419.375(c) identify provider accountability for assessing barriers to serving the patient in a less restrictive setting and taking efforts to achieve a less restrictive placement for the patient. These changes implement requirements of the U. S. Supreme Court decision in *Olmstead v. L.C.,* 527 U. S. 581 (1999). The amendment to §419.375(c)(2) makes paragraph (3) repetitive and it is deleted.

Amendments for §419.375(d) identify the failure to implement a corrective action plan as a contract violation and clarify that the provider would be subject to sanctions set forth in the contract, including termination. With these changes, paragraphs (1) and (2) of subsection (d) are deleted as unnecessary.

A new paragraph (7) is added to subsection (b) of §419.376 to identify noncompliance with rules or a corrective action plan as a basis for contract termination. An amendment to subsection (c) permits sanctions identified in the contract to be applied for failure to timely submit an acceptable cost report. Subsection (d) is amended to remove reference to outdated adverse action rules and to update reference to the commission's rules governing contested case hearings for contract terminations. Subsection (e) is amended to update reference to the commission's rules governing Medicaid fraud and abuse. In addition, the title of §419.376 is revised to reflect more accurately the substance of the rule.

Additional amendments are also adopted to §§419.373 - 419.377 in order to update and correct references to the name of the department and the commission, correct grammatical errors and statutory references, and improve the clarity of the rules. Section 419.378 is repealed as unnecessary. Amendments to §419.379, regarding required distribution of the rules, involve removing reference to the Texas Mental Health and Mental Retardation Board, and associated renumbering of paragraphs.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services, Deputy General Counsel, Linda Wiegman, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

25 TAC §§419.371, 419.373 - 419.377, 419.379

STATUTORY AUTHORITY

The amendments are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review and re-adoption of the rules implements Government Code, §2001.039.

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

Filed with the Office of the Secretary of State on June 13, 2007.

TRD-200702415
Linda Wiegman
Deputy General Counsel
Department of State Health Services
Effective date: July 3, 2007
Proposal publication date: March 23, 2007
For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

25 TAC §419.372, §419.378

STATUTORY AUTHORITY

The repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

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

Filed with the Office of the Secretary of State on June 13, 2007.

TRD-200702416
Linda Wiegman
Deputy General Counsel
Department of State Health Services
Effective date: July 3, 2007
Proposal publication date: March 23, 2007
For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

CHAPTER 450. COUNSELOR LICENSURE

25 TAC §§450.100 - 450.117, 450.120 - 450.126

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts new §450.100 and amendments to §§450.101 - 450.117 and 450.120 - 450.126 concerning the licensing and regulation of chemical dependency counselors without changes to the proposed text as published in the March 23, 2007, issue of the *Texas Register* (32 TexReg 1709) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The new rule and amendments to the rules are needed to correct certain citations and terminology, replace references to the department's legacy agency, the Texas Commission on Alcohol and Drug Abuse, and delete unnecessary text; to help increase the licensure examination passing rate for counselor interns; to recognize, through reduced supervision requirements, a higher level of competence achieved by counselor interns who have passed both portions of the licensure examination; to improve the ethical standards that apply to both licensed counselors and interns; and to allow persons on or called to active military duty to delay renewal of their license without penalty for the period of active duty. The amendments also implement statutory provisions for the Texas Online Project by providing for collection of subscription and convenience fees associated with new and renewal application processing through Texas Online. For consistency with other professional licensing programs, the amendments add the ability to pay fees by personal check and, to address the potential for increased costs from returned checks, authorize the department to collect a $25 fee for returned checks.

SECTION-BY-SECTION SUMMARY

The new §450.100 incorporates by reference currently applicable definitions found in §441.101 of this title, and adopts new and amended definitions to account for the transfer of certain duties, functions, programs, and powers from the Texas Commission on Alcohol and Drug Abuse to the department, and to clarify that inclusion of other licensed individuals within the definition of "Qualified Credentialed Counselor" does not extend the authorized scope of their respective licenses.

In addition to the changes outlined below, the amendments to §§450.101 - 450.117 and 450.120 - 450.126 correct certain internal rule citations, amend references to the former Texas Commission on Alcohol and Drug Abuse to refer to the department, and delete unnecessary text.

The amendment to §450.101 uses the unmodified term "social worker", consistent with Texas Occupations Code, §504.002, but clarifies that the exemption applies only to the extent that a person is acting within the authorized scope of one of the enumerated licenses held by that person.

The amendment to §450.102 corrects the terminology used in the reference to the definition of the KSAs by changing the word "Abilities" to "Attitudes," and corrects the cite reference.

The amendment to §450.104 creates a fee for returned checks and, consistent with other professions licensed by the department, allows counselor fees to now be paid with personal check. Pursuant to Texas Government Code, §2054.252, the proposed amendment allows the Department to collect subscription and convenience fees to recover costs associated with new and renewal application processing through Texas Online.

The amendment to §450.112 allows counselor interns to take each portion of the licensure examination four times, both verbal and written, without requiring that the two portions be taken together.

The amendment to §450.116 modifies for clarification the description of social workers who, because of their dual licensure status, are required to complete fewer continuing education hours to maintain their license as a licensed chemical depen-

dency counselor (LCDC). Additionally, these licensees will not have to submit a copy of their non-LCDC license at the time of renewal, since the department has the capacity to independently verify their non-LCDC licensure status. The amendment also adds provisions for licensure renewal for persons on or called to active military duty, in accordance with Texas Occupations Code, Chapter 55.

The amendment to §450.121 adds ethical standards relating to billing for services that were not provided, meeting with clients in inappropriate locations, and prohibiting conduct that could be considered coercive or degrading to the client or another.

The amendment to §450.125 revises the requirements for direct supervision of interns to allow an intern with less than 2,000 hours of documented work experience who has passed both the written and oral examinations to be supervised in accordance with Level III standards.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. One commenter was an individual submitting comments for the Alcohol and Drug Abuse Counseling Program at Midland College, who was not against the rules in their entirety, but submitted a recommendation for change as discussed in the summary of comments. The second commenter was an Austin Community College Human Services Professor who commented in favor of adoption of the rules.

Comment: Without addressing the comment to a specific proposed rule, one commenter expressed support for legislative amendments to give counselor interns the option of obtaining their supervised work experience from a certified clinical supervisor, in order to address a shortage of registered Clinical Training Institutions in some areas.

Response: The commission disagrees with the commenter, since the comment addresses legislative issues and suggests substantive changes not included in the proposed rules published for comment. No change was made to the rules as a result of this comment.

LEGAL CERTIFICATION

The Department of State Health Services, Deputy General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments and new rule are authorized by Texas Occupations Code, §504.051, which authorizes rulemaking necessary to carry out the duties established under Texas Occupations Code, Chapter 504, and the establishment of standards of conduct and ethics for Chapter 504 licensees; by Texas Occupations Code, §504.053, which authorizes the imposition of licensing and other fees to cover the costs of administering Texas Occupations Code, Chapter 504; by Texas Government Code, §2054.252, which requires the department to participate in an electronic system for occupational licensing transactions and authorizes an increase in licensure fees and the imposition of convenience fees on license holders to recover costs associated with online application and renewal application processing; by Texas Occupations Code, §§55.002 and 55.003, which authorize rulemaking to exempt active duty military personnel from late renewal fees and penalties, and authorize additional time for persons called to active duty to meet continuing education and renewal requirements; and by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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

Filed with the Office of the Secretary of State on June 13, 2007.

TRD-200702417
Lisa Hernandez
Deputy General Counsel
Department of State Health Services
Effective date: July 3, 2007
Proposal publication date: March 23, 2007
For further information, please call: (512) 458-7111 x6972

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 13. LAND RESOURCES

SUBCHAPTER F. VACANCY PROCESS

31 TAC §13.76

The Texas General Land Office (GLO) adopts amendments to §13.76, relating to Deposits. The amendments are adopted without changes to the proposed text published in the May 11, 2007, issue of the *Texas Register* (32 TexReg 2527) and will not be republished. The adopted amendment for §13.76(d) changes the deadline for the cost deposit to be received by the GLO.

The adopted amendment to §13.76(d) changes the deadline for receipt of the cost deposit, to reflect the deadline as stated in Texas Natural Resources Code §51.178(b).

No comments were received from the public concerning the adopted rulemaking.

The amendments are adopted under §51.174(c) of the Texas Natural Resources Code, which authorizes the commissioner to adopt rules necessary and convenient to administer the vacancy subchapter.

Texas Natural Resources Code, §51.178(b) is affected by the adopted amendment.

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

Filed with the Office of the Secretary of State on June 14, 2007.

TRD-200702418

Trace Finley
Policy Director
General Land Office
Effective date: July 4, 2007
Proposal publication date: May 11, 2007
For further information, please call: (512) 463-6311

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 29. PRACTICE AND PROCEDURE

37 TAC §29.9

The Texas Department of Public Safety adopts an amendment to §29.9, concerning Service of Pleadings and Motions, without changes to the proposed text as published in the April 6, 2007, issue of the *Texas Register* (32 TexReg 1991).

Adoption of the amendment to subsection (b) adds "regular mail" to the list of how pleadings, pleas, or motions shall be served and is necessary in order to conform to the State Office of Administrative Hearing Rules of Procedure, 1 TAC §155.25, relating to Service of Documents on Parties.

No comments were received regarding adoption of the amendment.

The amendment is adopted 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.

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

Filed with the Office of the Secretary of State on June 15, 2007.

TRD-200702466
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: July 5, 2007
Proposal publication date: April 6, 2007
For further information, please call: (512) 424-2135

♦ ♦ ♦

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 Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation (Division) files this notice of intention to review the rules contained in Chapter 110 concerning Required Notices of Coverage. This proposed review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature; the General Appropriations Act, Section 9-10, 76th Legislature; and Texas Government Code, §2001.039 as added by S.B. 178, 76th Legislature

The Division's reason for adopting the following rules contained in this chapter continues to exist and it proposes to readopt these rules:

§110.1. Requirements for Notifying the Commission of Insurance Coverage.

§110.101. Covered and Non-Covered Employer Notices to Employees.

§110.108. Employer Notice Regarding Work-Related Exposure to Communicable Disease/HIV: Posting Requirements; Payment for Tests.

§110.110. Reporting Requirements for Building or Construction Projects for Governmental Entities.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on July 30, 2007, and submitted to Victoria Ortega, Legal Services, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200702522
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: June 19, 2007

♦ ♦ ♦

The Texas Department of Insurance, Division of Workers' Compensation (Division) files this notice of intention to review the rules contained in Chapter 124 concerning Carriers: Required Notices and Mode of Payment. This proposed review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature; the General Appropriations Act, Section 9-10, 76th Legislature; and Texas Government Code, §2001.039 as added by S.B.178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist and it proposes to readopt these rules:

§124.1. Notice of Injury.

§124.2. Carrier Reporting and Notification Requirements.

§124.3. Investigation of an Injury and Notice of Denial/Dispute.

§124.5. Mode of Payment Made by Carriers.

§124.7. Initial Payment of Temporary Income Benefits.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on July 30, 2007, and submitted to Victoria Ortega, Legal Services, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200702523
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: June 19, 2007

♦ ♦ ♦

The Texas Department of Insurance, Division of Workers' Compensation (Division) files this notice of intention to review the rules contained in Chapter 164 concerning Hazardous Employer Program. This proposed review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature; the General Appropriations Act, Section 9-10, 76th Legislature; and Texas Government Code, §2001.039 as added by S.B. 178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter no longer exists and, therefore, the repeal of this rule is recommended.

§164.1. Criteria for Identifying Hazardous Employers.

§164.2. Notice to Hazardous Employers.

§164.3. Safety Consultation for Public Employers.

§164.5. Follow-up Inspection for Public Employers by the Division.

§164.6. Report of follow-up Inspection, Public Employers.

§164.7. Removal of Public Employers for Hazardous Employer Status.

§164.8. Continuation of Hazardous Employer Status, Public Employers.

§164.9. Approval of Professional Sources for Safety Consultations.

§164.10. Removal from the List of Approved Professional Sources.

§164.11. Request for Safety Consultation from the Division.

§164.12. Reimbursement of Division for Services Provided to Hazardous Employer.

§164.14. Values Assigned for Computation of Hazardous Employer Identification.

§164.15. Administrative Reviews and Hearings Regarding Identification as a Hazardous Employer.

§164.16. Removal of Private Employers from Hazardous Status.

§164.17. Availability of OSHCON Services.

§164.18. Severability.

Comments regarding whether the reason for not adopting these rules continue to exist must be received by 5:00 p.m. on July 30, 2007 and submitted to Victoria Ortega, Legal Services, The Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200702524
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: June 19, 2007

♦ ♦ ♦

Texas Medical Board

Title 22, Part 9

The Texas Medical Board proposes to review Chapter 176, §§176.1 - 176.9, concerning Health Care Liability Lawsuits and Settlements, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes amendments to §§176.1, 176.2, 176.4, 176.6, 176.8 and 176.9.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018.

TRD-200702425
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Filed: June 15, 2007

♦ ♦ ♦

The Texas Medical Board proposes to review Chapter 181, §§181.1 - 181.7, concerning Contact Lens Prescriptions, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes amendments to §§181.2, 181.3 and 181.6.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018.

TRD-200702426
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Filed: June 15, 2007

♦ ♦ ♦

The Texas Medical Board proposes to review Chapter 191, §§191.1 - 191.5, concerning District Review Committees, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes amendments to §191.4.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018.

TRD-200702427
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Filed: June 15, 2007

♦ ♦ ♦

The Texas Medical Board proposes to review Chapter 194, §§194.1 - 194.9 and 194.11, concerning Non-Certified Radiologic Technicians, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes amendments to §§194.2 - 194.6.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018.

TRD-200702428
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Filed: June 15, 2007

♦ ♦ ♦

The Texas Medical Board proposes to review Chapter 197, §§197.1 - 197.6, concerning Emergency Medical Service, pursuant to the Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously proposes amendments to §§197.1 - 197.4.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018.

TRD-200702429
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Filed: June 15, 2007

♦ ♦ ♦

The Texas Medical Board proposes to review Chapter 200, §§200.1 - 200.3, concerning Standards for Physicians Practicing Complementary

and Alternative Medicine, pursuant to the Texas Government Code, §2001.039.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018.

TRD-200702430
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Filed: June 15, 2007

♦ ♦ ♦

Adopted Rule Reviews

Texas Department of Banking

Title 7, Part 2

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Part 2, Chapter 12, concerning Loans and Investments. The review addressed the rules in all four subchapters, specifically Subchapter A (Lending Limits) comprised of §§12.1 - 12.10; Subchapter B (Loans) comprised of §§12.31 - 12.33; Subchapter C (Investment Limits) comprised of §12.61 and §12.62; and Subchapter D (Investments) comprised of §12.91.

Notice of the review of Chapter 12 was published in the February 16, 2007, issue of the *Texas Register* (32 TexReg 633). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting §§12.1 - 12.10, 12.31 - 12.33, 12.61 - 12.62, and 12.91 continue to exist. However, the commission has determined that certain revisions are appropriate and necessary. Proposed amendments to Chapter 12, with discussion of the justification for the proposed changes, are published in the Proposed Rules section of this issue of the *Texas Register*.

Subject to the proposed amended sections in Chapter 12, the commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections without changes in accordance with the requirements of Government Code, §2001.039.

TRD-200702462
Sarah J. Shirley
General Counsel
Texas Department of Banking
Filed: June 15, 2007

♦ ♦ ♦

The Finance Commission of Texas (commission), on behalf of the Texas Department of Banking (department), has completed the review of Texas Administrative Code, Title 7, Part 2, Chapter 25 (Prepaid Funeral Contracts), specifically Subchapter A (Contract Forms) comprised of §§25.1 - 25.8; Subchapter B (Regulation of Licenses) comprised of §§25.10 - 25.12, 25.17 - 25.25, 25.31 and 25.41; and Subchapter C (Investment of Trust Funds) comprised of §§25.51 - 25.59.

Notice of the review was published in the February 16, 2007, issue of the *Texas Register* (32 TexReg 633). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting the reviewed rules continue to exist and that the rules should be readopted without changes at this time. However, the department has determined that certain revisions may be appropriate and necessary with respect to prepaid funeral benefit contract forms, recordkeeping, the permit renewal process, examination costs and assessments, and trust conversions. Additionally, revisions to Subchapter C, concerning the investment of prepaid trust funds, may be necessary as a result of recently enacted amendments to Finance Code, Chapter 154. House Bill 2393, passed by the 80th Texas Legislature, replaces the specific listing of permissible investments in §154.258 of the Finance Code with a general prudent investor standard, and authorizes the commission to adopt rules providing investment guidelines. Unless vetoed by the Governor, House Bill 2393 will take effect on September 1, 2007. The department is in the process of developing amendments for proposal by the commission as soon as feasible.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts the rules without changes in accordance with the requirements of Government Code, §2001.039.

TRD-200702463
Sarah J. Shirley
General Counsel
Texas Department of Banking
Filed: June 15, 2007

♦ ♦ ♦

Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission has completed the review of rules in Title 13, Chapter 2, concerning the general policies and procedures of the agency, in accordance with Government Code §2001.039. The proposed review was published in the April 27, 2007, issue of the *Texas Register* (32 TexReg 2377). The commission received no comments on the review of Chapter 2.

The commission found the rules continue to be necessary and appropriate for the commission to perform its functions and to fulfill its statutory obligations.

Title 13, Chapter 2 rules were adopted pursuant to the Government Code §441.006(a)(1) and (2) that provides the Texas State Library and Archives Commission shall govern the Texas State Library and adopt rules to aid and encourage the development of and cooperation among all types of libraries; Government Code §§441.0092(b)(3), 441.0092(b)(1), and 441.136 that require the commission to adopt rules concerning various grants to libraries; Government Code §656.048 that requires state agencies to adopt rules concerning the training and education of agency employees; Government Code §2161.003 that requires state agencies to adopt rules concerning historically underutilized businesses; Government Code §2171.1045 that requires agencies to adopt rules concerning vehicle fleet management; and Government Code §2255.001 that requires state agencies to adopt rules concerning the relationship between an agency and any friends groups or similar organizations established to support the agency.

The adopted sections affect the Government Code §§441.006(a)(1) - (2), 441.0092(b)(3), 441.0092(b)(1), 441.136, 656.048, 2161.003, 2171.1045, and 2255.001.

TRD-200702475
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Filed: June 15, 2007

♦ ♦ ♦

The Texas State Library and Archives Commission has completed the review of rules in Title 13, Chapter 7, concerning the operation of regional historical resource depositories and the retention, microfilming, and electronic storage and filing of local government records, in accordance with Government Code §2001.039. The proposed review was published in the April 27, 2007, issue of the *Texas Register* (32 TexReg 2377). The commission received no comments on the review of Chapter 7.

The commission found the rules continue to be necessary and appropriate for the commission to fulfill its statutory obligations in the management of local government records, for local governments to meet the requirements of the Government Code Chapters 201-205 in the management of their records, and for county clerks in order to accept and record real property records electronically.

Title 13, Chapter 7 rules were adopted pursuant to the Government Code, §441.006(a)(9) that requires the Texas State Library and Archives Commission to adopt policies to aid and encourage effective records management and preservation programs in local governments of the state; the Government Code, §441.153(b) that requires the commission to adopt rules for Regional Historical Resource Depositories; the Government Code, §441.158(a) that requires the commission to adopt local government records retention schedules by rule, the Local Government Code, §195.002 that requires the commission to adopt rules by which a county clerk may accept and record real property records electronically, the Local Government Code, §204.004 that requires the commission to adopt rules establishing standards and procedures for microfilming local government records, and the Local Government Code, §205.003 that requires the commission to adopt rules establishing standards and procedures for electronic storage of local government record data.

The adopted sections affect the Government Code, §§441.006(a)(9), 441.153(b) and 441.158(a) and the Local Government Code, §§195.002, 204.004, and 205.003.

TRD-200702531
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Filed: June 19, 2007

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 §90.403(b)(11)

PROPERTY INSURANCE: I must keep my homestead insured against damage or loss in at least the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas.

☐ **If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.**

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. You [~~We~~] will insure the homestead for the lesser amount of the value of the property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

Credit property insurance is not required to obtain credit.

☐ Property Insurance $_____ Term _____

Figure: 7 TAC §90.404(a)(7)

TEXAS HOME EQUITY NOTE
(Fixed Rate – Second Lien)

THIS IS [~~SECURITY DOCUMENT SECURES~~] AN EXTENSION OF CREDIT AS DEFINED BY SECTION 50(a)(6), ARTICLE XVI OF THE TEXAS CONSTITUTION.

ACCOUNT/CONTRACT NO. _____
CREDITOR/LENDER _____
ADDRESS _____
_____

DATE OF NOTE _____
BORROWER _____
ADDRESS _____
_____

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost me.	**Amount Financed** The amount of credit provided to me or on my behalf.	**Total of Payments** The amount I will have paid after I have made all payments as scheduled.
%	$	$	$

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in my homestead.
Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.
Prepayment:(Scheduled Installment Earnings Method): If I pay off early, I may be entitled to a refund of part of the Finance Charge. I will not have to pay a penalty. **(True Daily Earnings Method):** If I pay off early, I will not have to pay a penalty.
Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

1. BORROWER'S PROMISE TO PAY

This loan is an Extension of Credit defined by Section 50(a)(6), Article XVI of the Texas Constitution. Scheduled Installment Earnings Method: I promise to pay the Total of Payments to the order of you. The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule. True Daily Earnings Method: I promise to pay the cash advance plus the accrued interest to the order of you. The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

2. LATE CHARGE

If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment.

3. AFTER MATURITY INTEREST

If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

4. PREPAYMENT

Scheduled Installment Earnings Method: I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. True Daily Earnings Method: I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

5. FINANCE CHARGE AND REFUND METHOD

For contracts using Scheduled Installment Earnings Method - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may be different from the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than $1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using Scheduled Installment Earnings Method with prepayments option - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using True Daily Earnings Method - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any charges I owe other than principal and interest.

6. FEE FOR DISHONORED CHECK

I agree to pay you a fee of up to $30 for a returned check. You may add the fee to the amount I owe or collect it separately.

7. DEFAULT

I will be in default if:

a. I do not timely make a payment to the person or place you direct;
b. I break any promise I made in the Loan Agreement;
c. I allow a lien to be entered against the homestead unless you agree in writing;
d. I sell, lease, or dispose of the homestead;
e. I use the homestead for an illegal purpose; or
f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the Loan Agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default. You may not demand that I pay the loan in full solely because the market value of the homestead decreases or because I default under any indebtedness not secured by the homestead.

8. PROPERTY INSURANCE

PROPERTY INSURANCE: I must keep my homestead insured against damage or loss in at least the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas.

☐ **If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.**

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. You will insure the homestead for the lesser amount of the value of the property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

Credit property insurance is not required to obtain credit.

☐ Property Insurance $_____ Term _____

9. CREDIT INSURANCE

Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

Credit Life, one borrower $_____ Credit Life, both borrowers $_____ Term _____

Credit Disability, one borrower $_____ Credit Disability, both borrowers $_____ Term _____

☐ **If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.**

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

_____

_____

Borrower's Signature Date

Premium Due with the First Month's Loan Payment	First Year Premium	Insurance Type:
$	$	
$	$	
$	$	

_____

Co-Borrower's Signature Date

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

(1) your receipt of my written request for cancellation;
(2) cancellation under the insurance certificate or policy;
(3) payment in full of my loan; or
(4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium.

10. MAILING OF NOTICES TO BORROWER

You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it by first class mail.

11. DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the homestead is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law.

If you exercise this option, you will give me notice of acceleration (i.e., payment of all I owe at once). This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement.

12. NO WAIVER OF LENDER'S RIGHTS

If you don't enforce your rights every time, you can still enforce them later.

13. COLLECTION EXPENSES

If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by law, including Section 50(a)(6), Article XVI of the Texas Constitution. These expenses include, for example, reasonable attorneys' fees. I understand that these fees are not for maintaining or servicing this Loan Agreement.

14. JOINT LIABILITY

I understand that you may seek payment from only me without first looking to any other Borrower. You can enforce your rights under this Loan Agreement solely against the homestead. This Loan Agreement is made without personal liability against each owner of the homestead and the spouse of each owner unless the owner or spouse obtained this loan by actual fraud.

If this loan is obtained by actual fraud, I will be personally liable for the debt, including a judgment for any deficiency that results from your sale of the homestead for an amount less than is owed under this Loan Agreement.

15. USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than the law allows.

16. SAVINGS CLAUSE

If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with any law will be modified to comply with the law. The rest of the Loan Agreement remains valid.

17. PRIOR AGREEMENTS

This written Loan Agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this Loan Agreement. Any change to this Loan Agreement must be in writing. Both you and I have to sign written agreements.

18. HOMESTEAD IS SUBJECT TO THE LIEN OF THE SECURITY DOCUMENT

The homestead described above by the property address is subject to the lien of the Security Document. I will see the separate Security Document for more information about my rights and responsibilities.

19. APPLICATION OF LAW

Federal law and Texas law apply to this Loan Agreement. The Texas Constitution will be applied to resolve any conflict between the Texas Constitution and any other law.

20. COMPLAINTS AND INQUIRIES NOTICE

This lender is licensed and examined by the State of Texas – Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems.

Office of Consumer Credit Commissioner
2601 North Lamar Boulevard, Austin, Texas 78705-4207
www.occc.state.tx.us
(800) 538-1579

21. COLLATERAL

The homestead described above by the property address is subject to the lien of the Security Document.

Do not sign if there are blanks left to be completed in this document. This document must be signed at the office of the Lender, an attorney at law, or a title company.

I must receive a copy of this document after I have signed it. I agree to the terms of this loan agreement.

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

(Sign Original Only)

(Option for witness signatures)

Figure: 7 TAC §90.404(a)(8)

TEXAS HOME EQUITY SECURITY DOCUMENT (Second Lien)

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

This Security Document is not intended to finance Borrower's acquisition of the Property.

THIS SECURITY DOCUMENT SECURES AN EXTENSION OF CREDIT AS DEFINED BY SECTION 50(a)(6), ARTICLE XVI OF THE TEXAS CONSTITUTION.

DEFINITIONS

(A) "Loan Agreement" means the Note, Security Document, deed of trust, any other related document, or any combination of those documents, under which you have extended credit to me.

(B) "Security Document" means this document, which is dated _____, together with all Riders to this document.

(C) "I" or "me" means _____, the grantor under this Security Document and the person who signed the Note ("Borrower").

(D) "You" means _____, the Lender and any holder entitled to receive payments under the Note.
Your address is _____. You are the beneficiary under this Security Document.

(E) "Trustee" is _____. Trustee's address is _____.

(F) "Note" means the promissory Note signed by me and dated _____. The Note states that the amount I owe you is _____ dollars (U.S. $____) plus interest. I have promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than _____(maturity date).

(G) "My Homestead" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Extension of Credit" means the debt evidenced by the Note, as defined by Section 50(a)(6), Article XVI of the Texas Constitution and all the documents executed in connection with the debt.

(I) "Riders" means all Riders to this Security Document that I execute. The Riders include *(check box as applicable)*:

☐ Texas Home Equity Condominium Rider
☐ Texas Home Equity Planned Unit Development Rider
☐ Other: _____

(J) "Applicable Law" means all controlling applicable federal, Texas and local constitutions, statutes, regulations, administrative rules, local ordinances, judicial and administrative orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or My Homestead by a condominium association, homeowners association, or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section ___ of this Security Document.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: (i) damage or destruction of My Homestead; (ii) condemnation or other taking of all or any part of My Homestead; (iii) conveyance instead of condemnation; or (iv) misrepresentations or omissions related to the value or condition of My Homestead.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note plus (ii) any amounts under this Security Document.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 *et seq.*) and Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Document, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of me" means any party that has taken title to My Homestead, whether or not that party has assumed my obligations under the Loan Agreement.

(R) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Security Document. Such an arrangement usually takes the form of a long-term "ground lease."

SECURED AGREEMENT

To secure this loan, I give you a security interest in My Homestead including existing and future improvements, easements, fixtures, attachments, replacements and additions to the property, insurance refunds, and proceeds. This security interest is intended to be limited to the homestead property and not other collateral, as required under the Texas Constitution.

TRANSFER OF RIGHTS IN THE PROPERTY

I give to the Trustee, in trust, with power of sale, My Homestead located in _____ County at *(Street Address) (City) (State) (Zip Code)* and further described as:

(Legal Description)

The security interest in My Homestead includes existing and future improvements, easements, fixtures, attachments, replacements and additions to the property, insurance refunds, and proceeds. To the extent required by law, the security interest is limited to homestead property. No additional real or personal property secures the Loan Agreement.

This Security Document secures:

a. repayment of the Note, and all extensions and modifications of the Note; and
b. the completion of my promises and agreements under the Loan Agreement.

I warrant that I own My Homestead and have the right to grant you an interest in it. I also warrant that My Homestead is free of any lien, except liens that are publicly recorded. I promise that I will generally defend the title to My Homestead. I will be responsible for your losses that result from a conflicting ownership right in My Homestead. Any default under my agreements with you will be a default of this Security Document.

YOU AND I PROMISE:

LATE CHARGES AND PREPAYMENT

I will timely pay the principal, interest, and any other amounts due under the Loan Agreement. I will comply with the requirements of my escrow account under the Loan Agreement. I will make payments in U.S. currency. If any check is returned to you unpaid, you may select the form of future payments including:

a. cash;
b. money order;
c. certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are federally insured; or
d. Electronic Funds Transfer.

I will make payments to the location as you direct. You will apply my payments against the loan only when they are received at the designated location. You may change the location for payments if you give me notice.

You may return any partial payment that does not bring the account current. You may accept any payment or partial payment that does not bring the account current without losing your rights to refuse full or partial payments in the future. I will not use any offset or claim against you to relieve me from my duty to make payments under the Loan Agreement.

FUNDS FOR ESCROW ITEMS

I will pay you an amount ("Funds") for:

a. taxes and assessments and other items that can take priority over your security interest in My Homestead under the Loan Agreement;
b. leasehold payments or Ground Rents on My Homestead, if any; and
c. premiums for any insurance you require under the Loan Agreement.

These items are called "Escrow Items." At any time during the term of the Loan Agreement, you may require me to pay Community Association Dues, Fees, and Assessments, if any, as an Escrow Item.

I will promptly give you all notices of amounts to be paid. I will pay you the Funds for Escrow Items unless you, at any time, waive my duty to pay you. Any escrow waiver must be in writing. If you waive my duty to pay you the Funds, I will pay, at your direction, the amounts due for waived Escrow Items. If you require, I will give you receipts showing timely payment. My duty to make Escrow Item payments and to provide receipts is an independent promise in the Loan Agreement.

If you grant me an escrow waiver, you may require me to pay the waived Escrow Items. If I fail to directly pay the waived Escrow Items, you may use any right given to you in the Loan Agreement. You may pay waived Escrow Items and require me to repay you. You may cancel the waiver for Escrow Items at any time by a notice that complies with the Loan Agreement. If you cancel the waiver, I will pay you all Funds that are then required under this Section.

At any time you may collect and hold Funds in an amount:

a. to permit you to apply the Funds at the time specified under RESPA; and
b. not to exceed the maximum amount you may require under RESPA.

You will estimate the amount of Funds due on the basis of current data and reasonable estimates of future expenses for Escrow Items or otherwise, according to Applicable Law. The Funds will be held in an institution whose deposits are federally insured (including you, if your deposits are insured) or in any Federal Home Loan Bank.

You will timely pay Escrow Items as required by RESPA. You will not charge me a fee for maintaining or handling my escrow account. You are not required to pay me any interest on the amounts in my escrow account. You will give me an annual accounting of the Funds as required by RESPA. If there is a surplus in my escrow account, you will follow RESPA. If there is a shortage or deficiency, as defined by RESPA, you will notify me, and I will pay you the amount necessary to make up the shortage or deficiency. I will repay the shortage or deficiency in no more than twelve monthly payments. You will promptly return to me any Funds after I have paid the Loan Agreement in full.

CHARGES AND LIENS

I will timely pay all taxes, assessments, charges, and fines relating to My Homestead that can take priority over this Security Document. I also will timely pay leasehold payments or Ground Rents on My Homestead, if any, and Community Association Dues, Fees, and Assessments, if any. If these items are Escrow Items, I will pay them as required by the Loan Agreement. I will promptly satisfy any lien that has priority over this Security Document unless I:

a. agree in writing to pay the amount secured by the lien in a manner acceptable to you and only so long as I comply with my agreement;
b. contest the lien in good faith by stopping the enforcement of the lien through legal proceedings (this contest must be satisfactory to you); or
c. obtain an agreement from the holder of the lien that is satisfactory to you.

If you determine that any part of My Homestead is subject to a lien that can take priority over this Security Document, you may give me a notice identifying the lien. I will satisfy the lien or take one or more of the actions described above in this Section within 10 days of the date of the notice.

PROPERTY INSURANCE

I will insure the current and future improvements to My Homestead against loss by fire, hazards included within the term "extended coverage," and any other hazards including earthquakes and floods, as you may require. I will keep this insurance in the amounts (including deductible levels) and for the periods that you require. You may change these insurance requirements during the term of the Loan Agreement. I have the right to choose an insurance carrier that is acceptable to you. You will exercise your right to disapprove reasonably.

I will pay any fee charged by the Federal Emergency Management Agency for the review of any flood zone determination. You may require me to pay either:

a. a one-time charge for flood zone determination, certification and tracking services; or
b. a one-time charge for flood zone determination and certification services; and subsequent charges each time re-mappings or similar changes occur that reasonably might affect the determination or certification.

If I do not keep any required insurance, you may obtain insurance at your option and at my expense. You are not required to purchase any type or amount of insurance. Any insurance you buy will always protect you, but may not protect me, my equity in My Homestead, my contents in My Homestead or protect me from certain hazards or liability. I understand that this insurance may cost significantly more than insurance I can purchase. I will owe you for the cost of any insurance that you buy under this Section. Interest will be charged on this amount at the interest rate used by the Note. The interest will be charged from the date you made the payment. You will give me notice of the amounts I owe under this Section.

You may disapprove any insurance policy or renewal. Any insurance policy must include a standard mortgage clause, and must name you as mortgagee or a loss payee. I will give you all insurance premium receipts and renewal notices, if you request. If I obtain any optional insurance to cover damage or destruction of My Homestead, I will name you as a loss payee. In the event of loss, I will give notice to you and the insurance company. You may file a claim if I do not file one promptly. You will apply insurance proceeds to repair or restore My Homestead unless your interest will be reduced or it will be economically unreasonable to perform the work. You may hold the insurance proceeds until you have had an opportunity to inspect the work and you consider the work to be acceptable. The insurance proceeds may be given in a single payment or multiple payments as the work is completed. You will not pay any interest on the insurance proceeds. If I hire a public adjuster or other third party, I am responsible for the fee. It will not be paid from the insurance proceeds. The insurance proceeds will be applied to the amount I owe if your interest will be reduced or if the work will be economically unreasonable to perform. You will pay me any excess insurance proceeds. You will apply insurance proceeds in the order provided by the Loan Agreement.

If I abandon My Homestead you may file, negotiate, and settle any insurance claim. If the insurance company offers to settle a claim and I do not respond within thirty days to a notice from you, then you may settle the claim. The 30-day period will begin when the notice is given. If I abandon My Homestead, fail to respond to the offer of settlement, or you foreclose on My Homestead, I assign to you:

a. my rights to any insurance proceeds in an amount not greater than what I owe; and
b. any of my other rights under insurance policies covering My Homestead.

You may apply the proceeds to repair or restore My Homestead or to the amount that I owe.

HOMESTEAD

I now occupy and use the property secured by this Security Document as my Texas homestead.

PRESERVATION, MAINTENANCE, PROTECTION, AND INSPECTION OF THE PROPERTY

I will not destroy, damage or impair My Homestead, allow it to deteriorate, or commit waste. Whether or not I live in My Homestead, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to My Homestead to avoid further deterioration or damage unless you and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring My Homestead only if you release the insurance or condemnation proceeds for the damage to or the taking of My Homestead. You may release proceeds for the repairs and restoration in a single payment or in a series of payments as the work is completed. I still am obligated to complete repairs or restoration of My Homestead even if there are not enough proceeds to complete the work. You or your agent may inspect My Homestead. You may inspect the interior of My Homestead with reasonable cause. You will give me notice stating reasonable cause when or before the interior inspection occurs.

CONDITIONS CAUSING ACTUAL FRAUD

I commit actual fraud under Section 50(a)(6)(C), Article XVI of the Texas Constitution if I or any person acting at my direction or with my knowledge or consent:

a. gives you materially false, misleading, or inaccurate information or statements;
b. fails to provide material information regarding the loan; or
c. commits any other action or inaction that is determined to be actual fraud.

Material representations include statements concerning my occupancy of My Homestead as a Texas homestead, the statements and promises contained in any document that I sign in connection with the Loan Agreement, and the execution of an acknowledgment of fair market value of My Homestead as described in the Loan Agreement. If I commit actual fraud I will be in default of the Loan Agreement and may be held personally liable.

PROTECTION OF LENDER'S INTEREST IN THE PROPERTY AND RIGHTS UNDER THE SECURITY DOCUMENT

You may do whatever is reasonable to protect your interest in My Homestead, including protecting or assessing the value of My Homestead, and securing or repairing My Homestead. You may do this when:

a. I fail to perform the promises and agreements contained in the Loan Agreement;
b. a legal proceeding might significantly affect your interest in My Homestead or rights under the Loan Agreement (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may have priority over the Loan Agreement or to enforce laws or regulations); or
c. I abandon My Homestead.

In order to protect your interest in My Homestead, you may:

a. pay amounts that are secured by a lien on My Homestead which has or will have priority over the Loan Agreement;
b. appear in court; or
c. pay reasonable attorneys' fees.

You may enter My Homestead to secure it. To secure My Homestead, you may make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. You have no duty to secure My Homestead. You are not liable for failing to take any action listed in this Section. Any amounts you pay under this Section will become my additional debt secured by the Loan Agreement. These amounts will earn interest at the rate specified in the Loan Agreement. The interest will begin on the date the amounts are paid. You will give me notice requesting payment of these amounts. If the Loan Agreement is on a leasehold, I will comply with the lease.

ASSIGNMENT OF MISCELLANEOUS PROCEEDS AND FORFEITURE

Any Miscellaneous Proceeds will be assigned and paid to you. If My Homestead is damaged, Miscellaneous Proceeds will be applied to restore or repair My Homestead. You will only do this if your interest in My Homestead will not be reduced and if the work will be economically reasonable to perform. You will have the right to hold Miscellaneous Proceeds until you inspect My Homestead to ensure the work has been completed to your satisfaction. You must make the inspection promptly. You may release proceeds for the work in a single payment or in multiple payments as the work is completed. You are not required to pay me any interest on the Miscellaneous Proceeds. The Miscellaneous Proceeds will be applied to the amount I owe if your interest in My Homestead will be reduced or the work will be economically unreasonable to perform. You will pay me any excess Miscellaneous Proceeds. You will apply Miscellaneous Proceeds in the order provided by the Loan Agreement.

You will apply all Miscellaneous Proceeds to the amount I owe in the event of a total taking, destruction, or loss in value of My Homestead. You will apply the Miscellaneous Proceeds even if all payments are current. You will give any excess Miscellaneous Proceeds to me.

A partial loss can include a taking, destruction, or loss in value. In the event of a partial loss, the Miscellaneous Proceeds will be applied in one of two ways:

a. If the fair market value of My Homestead immediately before the partial loss is less than the amount I owe immediately before the partial loss, then you will apply all Miscellaneous Proceeds to the amount I owe even if all payments are current.
b. If the fair market value of My Homestead immediately before the partial loss is equal to or greater than the amount I owe immediately before the partial loss, then you will apply Miscellaneous Proceeds to the amount I owe in the following manner:
    1. The amount of Miscellaneous Proceeds multiplied by the result of,
    2. The amount I owe immediately before the partial loss divided by the fair market value of My Homestead immediately before the partial loss.

You and I can agree otherwise in writing. You will give any excess Miscellaneous Proceeds to me.

If I abandon My Homestead you may apply Miscellaneous Proceeds either to restore or repair My Homestead, or to the amount I owe.

Damage to My Homestead caused by a third party may result in a civil proceeding. If you give me notice that the third party offers to settle a claim for damages to My Homestead and I fail to respond to you within thirty days, you may accept the offer and apply the Miscellaneous Proceeds either to restore or repair My Homestead or to the amount I owe. If the proceeding results in an award of damages, you will apply the Miscellaneous Proceeds according to this Section.

FORBEARANCE NOT A WAIVER

My successors and I will not be released from liability if you extend the time for payment or modify the payment schedule. If I pay late, you will not have to sue me or my successor to require timely future payments. You may refuse to (1) extend time for payment or (2) modify this Loan Agreement even if I request it. If you do not enforce your rights every time, you may enforce them later.

JOINT AND SEVERAL LIABILITY, SECURITY DOCUMENT EXECUTION, SUCCESSORS OBLIGATED

I understand that you may seek payment from me without first looking to any other person who signed the Note. Any person who signs this Security Document, but not the Note:

a. has no duty to pay the sums secured by this Security Document;
b. is not a surety or guarantor;
c. only grants the person's interest in My Homestead under the terms of this Security Document; and
d. grants the person's interest in My Homestead to comply with the requirements of Section 50(a)(6)(A), Article XVI of the Texas Constitution.

The lien against My Homestead is a voluntary lien and is a written agreement that shows the consent of each owner and each owner's spouse. You and I may extend, modify, or make any arrangements with respect to the terms of the Loan Agreement. Upon your approval, my successor who assumes my duties in writing will receive all of my rights and benefits under the Loan Agreement. I still will be responsible under the Loan Agreement unless you release me in writing. The Loan Agreement will extend to your assigns or successors.

EXTENSION OF CREDIT CHARGES

If an Applicable Law that sets a maximum charge is finally interpreted so that the interest, loan charges, or fees collected or to be collected with the Loan Agreement exceed the permitted amount, then you will:

a. reduce the amount to the amount permitted; or
b. refund the excessive amount to me.

You may choose to apply this refund to the amount I owe or pay it directly to me. If you apply the refund to the amount I owe, the refund will be treated as a partial prepayment.

If I default, you will be able to charge me reasonable fees paid to an attorney who is not your employee to protect your interest in My Homestead.

DELIVERY OF NOTICES

Under the Loan Agreement, you and I will give notices to each other in writing. Any notice under the Loan Agreement will be considered given to me when it is mailed by first class mail or when actually delivered to me at my address if given by another means. You will give notice to My Homestead address unless I provide you a different address. I will notify you promptly of any change of address. I will comply with any reasonable procedure for giving a change of address that you provide. There will only be one address for notice under the Loan Agreement. Notice to me will be considered notice to all persons who are obligated under the Loan Agreement unless Applicable Law requires a separate notice. I may give you notice by delivering or mailing it by first class mail to the address provided by you, unless you require a different procedure. You, however, will not receive notice under the Loan Agreement until you actually receive it. Legal requirements governing notices subject to the Loan Agreement will prevail over conditions in the Loan Agreement.

GOVERNING LAW AND SEVERABILITY

The Loan Agreement will be governed by Texas law and federal law. If any provision in the Loan Agreement conflicts with any legal requirement, all non-conflicting provisions will remain effective.

RULES OF CONSTRUCTION

As used in the Loan Agreement:

a. words in the singular will mean and include the plural and vice versa; and
b. the word "may" gives sole discretion without imposing any duty to take action.

LOAN AGREEMENT COPIES

At the time the Loan Agreement is made, you will give me copies of all documents I sign.

TRANSFER OF INTEREST IN PROPERTY

"Interest in My Homestead" means any legal or beneficial interest. This term includes those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement (the intent of which is the transfer of title by me at a future date to a purchaser). If any part of My Homestead is sold or transferred without your prior written permission, you may require immediate payment of all I owe. You will not exercise this option if disallowed by Applicable Law. If you accelerate, you will give me notice. The notice of acceleration will allow me at least 21 days from the date the notice is given to pay all I owe. If I fail to timely pay all I owe, you may pursue any remedy allowed by the Loan Agreement without further notice or demand.

BORROWER'S RIGHT TO REINSTATE AFTER ACCELERATION

I have the right to stop you from enforcing the Loan Agreement any time before the earliest of:

a. 5 days before sale of My Homestead under any power of sale included in the Loan Agreement;
b. the day required by Applicable Law for the termination of my right to reinstate; or
c. the entry of a judgment enforcing the Loan Agreement.

I can stop the enforcement of the Loan Agreement and reinstate the Loan Agreement if all the following conditions are met:

a. You are paid what I owe under the Loan Agreement as if no acceleration had occurred;
b. I cure any default of any promise or agreement;
c. You are paid all expenses allowed by Applicable Law, including reasonable attorneys' fees and other fees incurred for the purpose of protecting your interest in My Homestead and rights under the Loan Agreement;
d. I comply with any reasonable requirement to assure you that your interest in My Homestead will remain intact; and
e. I comply with any reasonable requirement to assure you that my ability to pay what I owe will remain intact.

You may require me to pay for the reinstatement in one or more of the following forms:

a. cash;
b. money order;
c. certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are federally insured; or
d. Electronic Funds Transfer.

Upon reinstatement, the Loan Agreement will remain effective as if no acceleration had occurred. However, this right to reinstate will not apply if I sell or transfer any interest in My Homestead without your permission.

SALE OF NOTE, CHANGE OF LOAN SERVICER, NOTICE OF GRIEVANCE, LENDER'S RIGHT TO COMPLY

A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA. If a different company services the Loan Agreement, the servicing duties to me will be transferred.

You or I must give notice of any violation of the Loan Agreement to the other and the opportunity to address the alleged violation before starting or joining any legal action. You and I will give each other a reasonable amount of time to address the alleged violation. If the law provides a specified time period that must be given to address a violation, that time period will be a reasonable time for purposes of this paragraph. Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section.

You and I intend to strictly follow the provisions of the Texas Constitution that relate to the Loan Agreement (Section 50(a)(6), Article XVI of the Texas Constitution).

No agreement between you and me or any third party will limit your ability to comply with your duties under the Loan Agreement and the Applicable Law. The Loan Agreement is being made on the condition that you have a reasonable amount of time to correct any violation of Applicable Law. I will notify you of any violation and give you a reasonable amount of time to comply before taking any action. I will cooperate with your reasonable effort to correct the Loan Agreement. You will forfeit all principal and interest as required by Applicable Law if you have:

a. received my notice;
b. had a reasonable amount of time to correct the violation; and
c. failed to correct the violation.

You and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law.

You and I intend to conform the Loan Agreement to the provisions of the Texas Constitution and Texas law. If any promise, payment, duty or provision of the Loan Agreement is in conflict with the Applicable Law, then the promise, payment, duty or provision will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Your right to correct any violation will survive my paying off the Loan Agreement. My right to correct will override any conflicting provision of the Loan Agreement.

Your right-to-comply as provided in this Section will survive the payoff of the Loan Agreement. The provisions of this Section will supersede any inconsistent provision of the Loan Agreement.

HAZARDOUS SUBSTANCES

Hazardous Substances:

a. "Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials;
b. "Environmental Law" means federal laws and laws of the jurisdiction where My Homestead is located that relate to health, safety or environmental protection;
c. "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and
d. "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in My Homestead. I will not do or allow anyone else to do, anything affecting My Homestead:

a. that is in violation of any Environmental Law;
b. that creates an Environmental Condition; or
c. that, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of My Homestead.

The presence, use, or storage on My Homestead of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and for the maintenance of My Homestead are allowed. This includes Hazardous Substances found in consumer products.

I will promptly give you written notice of:

a. any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving My Homestead and any Hazardous Substance or Environmental Law of which I have actual knowledge;
b. any Environmental Condition, including any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and
c. any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of My Homestead.

If I learn that, or am notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting My Homestead is necessary, I promptly will take all necessary remedial actions in accordance with Environmental Law. You will have no obligation for an Environmental Cleanup.

ACCELERATION AND REMEDIES

You will give me notice prior to acceleration if I am in default under the Loan Agreement. The notice will specify:

a. the default;
b. the action required to cure the default;
c. a date, not less than 21 days from the date you give me notice, to cure the default; and
d. that my failure to cure the default on or before the specified date will result in acceleration of all that I owe under the Loan Agreement and sale of My Homestead.

You will inform me of my right to reinstate after acceleration and my right to bring a court action to contest the alleged default or to assert any other defense to the acceleration and sale. If the default is not cured before the specified date, you have the option to require immediate payment in full of all I owe. If you are not paid all I owe, you may sell My Homestead or seek other remedies allowed by Applicable Law without further notice. You may collect your reasonable expenses incurred in seeking the remedies provided in this Section. These expenses may include court costs, attorneys' fees, and costs of title search.

This lien against My Homestead may be foreclosed upon only by a court order. You may, at your option, follow any rules of civil procedure for expedited foreclosure proceedings related to the foreclosure of liens under Section 50(a)(6), Article XVI of the Texas Constitution ("Rules"). The power of sale granted by the Loan Agreement will be exercised according to the Rules. I understand the power of sale is not a confession of judgment or a power of attorney to confess judgment or an appearance by me in a judicial proceeding.

POWER OF SALE

You have a fully enforceable lien on My Homestead. Your remedies for my default include an efficient means of foreclosure under the law. You and the Trustee have all powers to conduct a foreclosure except as limited by the Texas Supreme Court. If you choose to use the power of sale, you will give me notice of the time, place and terms of the sale by posting and filing notice at least 21 days before the sale as provided by law. You will give me notice by mail as required by law. The sale will be conducted at a public place. The sale will be held:

a. on the first Tuesday of a month;
b. at a time stated in the notice or no later than 3 hours after the time; and
c. between 10:00 a.m. and 4:00 p.m.

I allow the Trustee to sell My Homestead to the highest bidder for cash in one or more parcels and in any order the Trustee determines. You may purchase My Homestead at any sale. The Rules will prevail in a conflict between the procedures and the Rules. If a conflict arises, the conflicting provision will be corrected in order to comply.

Trustee will give a Trustee's deed to the foreclosure sale purchaser. A Trustee's deed will convey:

a. good title to My Homestead that cannot be defeated; and
b. title with promises of general warranty from me.

I will defend the purchaser's title to My Homestead against all claims and demands. The description of facts contained in the Trustee's deed will be sufficient to legally prove the truth of the statements made in the deed. Trustee will apply the proceeds of the sale in the following order:

a. to all expenses of the sale, including court costs and reasonable Trustee's and attorneys' fees;
b. what I owe; and
c. any excess to the person or persons legally entitled to it.

If My Homestead is sold through a foreclosure sale governed by this Section, I or any person in possession of My Homestead through me, will give up possession of My Homestead without delay. A person who does not give up possession is a holdover and may be removed by a court order.

RELEASE

You will cancel and return the Note to me and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the lien to a lender that is refinancing the Loan Agreement. I will pay only the cost of recording the release of lien. My acceptance of the release or endorsement and assignment will end all of your duties under Section 50(a)(6), Article XVI of the Texas Constitution.

NON-RECOURSE LIABILITY

You are entitled to all rights, superior title, liens and equities owned or claimed by any grantor or holder of any liens and debts due before the signing of the Loan Agreement. You are entitled to these rights whether you acquire the liens or debts by assignment or the holder releases them upon payment.

Each person who signs the Security Document is responsible for each promise and duty in the Security Document, subject to limitation of personal liability described below. The Texas Constitution provides that the Loan Agreement is given without personal liability against each owner of My Homestead and the spouse of each owner. Personal liability may be obtained if the Loan Agreement was obtained by actual fraud. This means that, unless actual fraud is found by a court, you are only able to enforce your rights under the Loan Agreement against My Homestead. You are not able to seek personal liability against the owner of My Homestead or the spouse of an owner. If the Loan Agreement is obtained by actual fraud, then I will be personally liable for the payment of any amounts due under the Loan Agreement. This means that a personal judgment could be obtained against me for a deficiency as a result of a foreclosure sale of My Homestead. A personal judgment would subject my other assets for the payment of the debt.

Unless prohibited by the Texas Constitution, this Section will not:

a. impair in any way the Loan Agreement or your right to collect all that I owe under the Loan Agreement;
b. affect your right to any promise or condition of the Loan Agreement.

PROCEEDS

I am not required to apply the proceeds of the Loan Agreement to repay another debt except a debt secured by My Homestead or a debt to another lender.

NO ASSIGNMENT OF WAGES

I have not assigned wages as security for the Loan Agreement.

ACKNOWLEDGMENT OF FAIR MARKET VALUE

You and I agreed in writing to the fair market value of My Homestead on the date of the Loan Agreement.

TRUSTEES AND TRUSTEE LIABILITY

One or more Trustees acting alone or together may exercise or perform all rights, remedies and duties of the Trustee under the Loan Agreement. You may remove or change any Trustee (e.g., add one or more Trustees or appoint a successor Trustee to any Trustee). This removal or change of Trustee must be in writing and may be:

a. at your option;
b. with or without cause; and
c. by power of attorney or otherwise.

The substitute, additional or successor Trustee will receive, without any further act, the title, rights, remedies, powers and duties under the Loan Agreement and Applicable Law.

Trustee may rely, without liability, upon any notice, request, consent, demand, statement or other document reasonably believed by Trustee to be valid. Trustee will not be liable for any act or omission unless the act or omission is willful.

WAIVER OF ADDITIONAL COLLATERAL

I agree that you waive all terms in any of your current or future loan documentation that:

a. creates a default of the Loan Agreement by a default of another obligation that is not secured by My Homestead;
b. provides for collateral other than My Homestead (including cross collateralization or dragnet provisions);
c. creates personal liability for me for the Loan Agreement (unless this loan was obtained by actual fraud); or
d. creates a personal guaranty.

DEFAULT

Any default of my agreements with you will be a default of this Security Document.

BY SIGNING BELOW, I accept and agree to the terms and promises contained in the Loan Agreement and in any Rider I sign which is recorded with it. (DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. THIS DOCUMENT MUST BE SIGNED AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW OR A TITLE COMPANY. I MUST RECEIVE A COPY OF ANY DOCUMENT I SIGN.)

I MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THE LOAN AGREEMENT WITHOUT PENALTY OR CHARGE.

_____ _____(seal)
-Borrower

Printed Name:_____
(Please Complete)

_____(seal)
-Borrower

_____

_____(seal)
-Borrower

_____(seal)
-Borrower

(Acknowledgment on following page)

Figure: 7 TAC §90.504(a)(8)

PURCHASE MONEY SECURITY DOCUMENT
(Second Lien)

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

DEFINITIONS

(A) "Loan Agreement" means the Note, Security Document, deed of trust, any other related document, or any combination of those documents, under which you have made a loan to me.

(B) "Security Document" means this document, which is dated _____, together with all Riders to this document.

(C) "I" or "me" means _____, the grantor under this Security Document and the person who signed the Note ("Borrower").

(D) "You" means _____, the Lender and any holder entitled to receive payments under the Note. Your address is _____. You are the beneficiary under this Security Document.

(E) "Trustee" is _____. Trustee's address is _____.

(F) "Note" means the Purchase Money Note signed by me and dated _____. The Note states that the amount I owe you is _____ dollars (U.S. $_____) plus interest. I have promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than _____(maturity date).

(G) "Property" means the real estate that is described below under the heading "Transfer of Rights in the Property."

(H) "Riders" means all Riders to this Security Document that I execute. The Riders include (*check box as applicable*):

☐ Texas Purchase Money Condominium Rider
☐ Texas Purchase Money Planned Unit Development Rider
☐ Other: _____

(I) "Applicable Law" means all controlling applicable federal, Texas and state constitutions, statutes, regulations, administrative rules, local ordinances, and judicial and administrative orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or the Property by a condominium association, homeowners association, or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section _____ of this Security Document.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: damage or destruction of the Property; condemnation or other taking of all or any part of the Property; conveyance instead of condemnation; or misrepresentations or omissions related to the value or condition of the Property.

(N) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amounts under this Security Document.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 *et seq.*) and Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Document, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of me" means any party that has taken title to the Property, whether or not that party has assumed my obligations under the Loan Agreement.

(Q) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Security Document. Such an arrangement usually takes the form of a long-term "ground lease."

SECURED AGREEMENT

To secure this Loan Agreement I give you a security interest in the Property including existing and future improvements, easements, fixtures, attachments, replacements and additions to the Property, insurance refunds, and proceeds.

TRANSFER OF RIGHTS IN THE PROPERTY

I give to the Trustee, in trust, with power of sale, the Property located in _____ County at *(Street Address) (City) (State) (Zip Code)* and further described as:

(Legal Description)

The security interest in the Property includes existing and future improvements, easements, fixtures, attachments, replacements and additions to the Property, insurance refunds, and proceeds.

This Security Document secures:

a. repayment of the Note, and all extensions and modifications of the Note; and
b. the completion of my promises and agreements under the Loan Agreement.

I promise that I own the Property and have the right to grant you an interest in it. I also promise that the Property is free of any lien, except liens that are publicly recorded. I promise that I will generally defend the title to the Property. I will be responsible for your losses that result from a conflicting ownership right in the Property. Any default under my agreements with you will be a default of this Security Document.

YOU AND I PROMISE:

PAYMENT OF LATE CHARGES AND PREPAYMENT

I will timely pay the principal, interest, and any other amounts due under the Loan Agreement. I will comply with the requirements of my escrow account under the Loan Agreement. I will make payments in U.S. currency. If any check is returned to you unpaid, you may select the form of future payments including:

a. cash;
b. money order;
c. certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are federally insured; or
d. Electronic Funds Transfer.

I will make payments to the location as you direct. You will apply my payments against the Loan Agreement only when they are received at the designated location. You may change the location for payments if you give me notice.

You may return any partial payment that does not bring the account current. You may accept any payment or partial payment that does not bring the account current without losing your rights to refuse full or partial payments in the future. I will not use any offset or claim against you to relieve me from my duty to make payments under the Loan Agreement.

FUNDS FOR ESCROW ITEMS

I will pay you an amount ("Funds") for:

a. taxes and assessments and other items that can take priority over your security interest in the Property under the Loan Agreement;
b. leasehold payments or Ground Rents on the Property, if any; and
c. premiums for any insurance you require under the Loan Agreement.

These items are called "Escrow Items." At any time during the term of the Loan Agreement, you may require me to pay Community Association Dues, Fees, and Assessments, if any, as an Escrow Item.

I will promptly give you all notices of amounts to be paid. I will pay you the Funds for Escrow Items unless you, at any time, waive my duty to pay you. Any escrow waiver must be in writing. If you waive my duty to pay you the Funds, I will pay, at your direction, the amounts due for waived Escrow Items. If you require, I will give you receipts showing timely payment. My duty to make Escrow Item payments and to provide receipts is an independent promise in the Loan Agreement.

If you grant me an escrow waiver, you may require me to pay the waived Escrow Items. If I fail to directly pay the waived Escrow Items, you may use any right given to you in the Loan Agreement. You may pay waived Escrow Items and require me to repay you. You may cancel the waiver for Escrow Items at any time by a notice that complies with the Loan Agreement. If you cancel the waiver, I will pay you all Funds that are then required under this Section.

At any time you may collect and hold Funds in an amount:

a. to permit you to apply the Funds at the time specified under RESPA; and
b. not to exceed the maximum amount you may require under RESPA.

You will estimate the amount of Funds due on the basis of current data and reasonable estimates of future expenses for Escrow Items or otherwise, according to Applicable Law. The Funds will be held in an institution whose deposits are federally insured (including you, if your deposits are insured) or in any Federal Home Loan Bank.

You will timely pay Escrow Items as required by RESPA. You will not charge me a fee for maintaining or handling my escrow account. You are not required to pay me any interest on the amounts in my escrow account. You will give me an annual accounting of the Funds as required by RESPA. If there is a surplus in my escrow account, you will follow RESPA. If there is a shortage or deficiency, as defined by RESPA, you will notify me, and I will pay you the amount necessary to make up the shortage or deficiency. I will repay the shortage or deficiency in no more than twelve monthly payments. You will promptly return to me any Funds after I have paid the Loan Agreement in full.

CHARGES AND LIENS

I will timely pay all taxes, assessments, charges, and fines relating to the Property that can take priority over this Security Document. I also will timely pay leasehold payments or Ground Rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. If these items are Escrow Items, I will pay them as required by the Loan Agreement. I will promptly satisfy any lien that has priority over this Security Document unless I:

a. agree in writing to pay the amount secured by the lien in a manner acceptable to you and only so long as I comply with my agreement;
b. contest the lien in good faith by stopping the enforcement of the lien through legal proceedings (this contest must be satisfactory to you); or
c. obtain an agreement from the holder of the lien that is satisfactory to you.

If you determine that any part of the Property is subject to a lien that can take priority over this Security Document, you may give me a notice identifying the lien. I will satisfy the lien or take one or more of the actions described above in this Section within 10 days of the date of the notice.

PROPERTY INSURANCE

I will insure the current and future improvements to the Property against loss by fire, hazards included within the term "extended coverage," and any other hazards including earthquakes and floods, as you may require. I will keep this insurance in the amounts (including deductible levels) and for the periods that you require. You may change these insurance requirements during the term of the Loan Agreement. I have the right to choose an insurance carrier that is acceptable to you. You will exercise your right to disapprove reasonably.

I will pay any fee charged by the Federal Emergency Management Agency for the review of any flood zone determination. You may require me to pay either:

a. a one-time charge for flood zone determination, certification and tracking services; or
b. a one-time charge for flood zone determination and certification services; and subsequent charges each time re-mappings or similar changes occur that reasonably might affect the determination or certification.

If I do not keep any required insurance, you may obtain insurance at your option and at my expense. You are not required to purchase any type or amount of insurance. Any insurance you buy will always protect you, but may not protect me, my equity in the Property, my contents in the Property or protect me from certain hazards or liability. I understand that this insurance may cost significantly more than insurance I can purchase. I will owe you for the cost of any insurance that you buy under this Section. Interest will be charged on this amount at the interest rate used by the Note. The interest will be charged from the date you made the payment. You will give me notice of the amounts I owe under this Section.

You may disapprove any insurance policy or renewal. Any insurance policy must include a standard mortgage clause, and must name you as mortgagee or a loss payee. I will give you all insurance premium receipts and renewal notices, if you request. If I obtain any optional insurance to cover damage or destruction of the Property, I will name you as a loss payee. In the event of loss, I will give notice to you and the insurance company. You may file a claim if I do not file one promptly. You will apply insurance proceeds to repair or restore the Property unless your interest will be reduced or it will be economically unreasonable to perform the work. You may hold the insurance proceeds until you have had an opportunity to inspect the work and you consider the work to be acceptable. The insurance proceeds may be given in a single payment or multiple payments as the work is completed. You will not pay any interest on the insurance proceeds. If I hire a public adjuster or other third party, I am responsible for the fee. It will not be paid from the insurance proceeds. The insurance proceeds will be applied to the amount I owe if your interest will be reduced or if the work will be economically unreasonable to perform. You will pay me any excess insurance proceeds. You will apply insurance proceeds in the order provided by the Loan Agreement.

If I abandon the Property you may file, negotiate, and settle any insurance claim. If the insurance company offers to settle a claim and I do not respond within thirty days to a notice from you, then you may settle the claim. The 30-day period will begin when the notice is given. If I abandon the Property, fail to respond to the offer of settlement, or you foreclose on the Property, I assign to you:

a. my rights to any insurance proceeds in an amount not greater than what I owe; and
b. any of my other rights under insurance policies covering the Property.

You may apply the proceeds to repair or restore the Property or to the amount that I owe.

PRESERVATION, MAINTENANCE, PROTECTION, AND INSPECTION OF THE PROPERTY

I will not destroy, damage or impair the Property, allow it to deteriorate, or commit waste. Whether or not I live in the Property, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to the Property to avoid further deterioration or damage unless you and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring the Property only if you release the insurance or condemnation proceeds for the damage to or the taking of the Property. You may release proceeds for the repairs and restoration in a single payment or in a series of payments as the work is completed. I still am obligated to complete repairs or restoration of the Property even if there are not enough proceeds to complete the work. If this Security Document secures a unit in a condominium or planned unit development, I will perform all of my obligations under the declaration or covenants creating or governing the condominium or planned unit development, and any other relevant document. You or your agent may inspect the Property. You may inspect the interior of the Property with reasonable cause. You will give me notice stating reasonable cause when or before the interior inspection occurs.

PROTECTION OF LENDER'S INTEREST IN THE PROPERTY AND RIGHTS UNDER THE SECURITY DOCUMENT

You may do whatever is reasonable to protect your interest in the Property, including protecting or assessing the value of the Property, and securing or repairing the Property. You may do this when:

a. I fail to perform the promises and agreements contained in the Loan Agreement;
b. a legal proceeding might significantly affect your interest in the Property or rights under the Loan Agreement (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may have priority over the Loan Agreement or to enforce laws or regulations); or
c. I abandon the Property.

In order to protect your interest in the Property, you may:

a. pay amounts that are secured by a lien on the Property which has or will have priority over the Loan Agreement;
b. appear in court; or
c. pay reasonable attorneys' fees.

You may enter the Property to secure it. To secure the Property, you may make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. You have no duty to secure the Property. You are not liable for failing to take any action listed in this Section. Any amounts you pay under this Section will become my additional debt secured by the Loan Agreement. These amounts will earn interest at the rate specified in the Loan Agreement. The interest will begin on the date the amounts are paid. You will give me notice requesting payment of these amounts. If the Loan Agreement is on a leasehold, I will comply with the lease.

ASSIGNMENT OF MISCELLANEOUS PROCEEDS AND FORFEITURE

Any Miscellaneous Proceeds will be assigned and paid to you. If the Property is damaged, Miscellaneous Proceeds will be applied to restore or repair the Property. You will only do this if your interest in the Property will not be reduced and if the work will be economically reasonable to perform. You will have the right to hold Miscellaneous Proceeds until you inspect the Property to ensure the work has been completed to your satisfaction. You must make the inspection promptly. You may release proceeds for the work in a single payment or in multiple payments as the work is completed. You are not required to pay me any interest on the Miscellaneous Proceeds. The Miscellaneous Proceeds will be applied to the amount I owe if your interest in the Property will be reduced or the work will be economically unreasonable to perform. You will pay me any excess Miscellaneous Proceeds. You will apply Miscellaneous Proceeds in the order provided by the Loan Agreement.

You will apply all Miscellaneous Proceeds to the amount I owe in the event of a total taking, destruction, or loss in value of the Property. You will apply the Miscellaneous Proceeds even if all payments are current. You will give any excess Miscellaneous Proceeds to me.

A partial loss can include a taking, destruction, or loss in value. In the event of a partial loss, the Miscellaneous Proceeds will be applied in one of two ways:

a. If the fair market value of the Property immediately before the partial loss is less than the amount I owe immediately before the partial loss, then you will apply all Miscellaneous Proceeds to the amount I owe even if all payments are current.
b. If the fair market value of the Property immediately before the partial loss is equal to or greater than the amount I owe immediately before the partial loss, then you will apply Miscellaneous Proceeds to the amount I owe in the following manner:

    1. The amount of Miscellaneous Proceeds multiplied by the result of,
    2. The amount I owe immediately before the partial loss divided by the fair market value of the Property immediately before the partial loss.

You and I can agree otherwise in writing. You will give any excess Miscellaneous Proceeds to me.

If I abandon the Property, you may apply Miscellaneous Proceeds either to restore or repair the Property, or to the amount I owe.

Damage to the Property caused by a third party may result in a civil proceeding. If you give me notice that the third party offers to settle a claim for damages to the Property and I fail to respond to you within thirty days, you may accept the offer and apply the Miscellaneous Proceeds either to restore or repair the Property or to the amount I owe. If the proceeding results in an award of damages, you will apply the Miscellaneous Proceeds according to this Section.

FORBEARANCE NOT A WAIVER

My successors and I will not be released from liability if you extend the time for payment or modify the payment schedule. If I pay late, you will not have to sue me or my successor to require timely future payments. You may refuse to (1) extend time for payment or (2) modify this Loan Agreement even if I request it. If you do not enforce your rights every time, you may enforce them later.

JOINT AND SEVERAL LIABILITY, SECURITY DOCUMENT EXECUTION, SUCCESSORS OBLIGATED

I understand that you may seek payment from me without first looking to any other person who signed the Note. Any person who signs this Security Document, but not the Note:

a. has no duty to pay the sums secured by this Security Document;
b. is not a surety or guarantor; and
c. only grants the person's interest in the Property under the terms of this Security Document.

The lien against the Property is a voluntary lien and is a written agreement that shows the consent of each owner. You and I may extend, modify, or make any arrangements with respect to the terms of the Loan Agreement. Upon your approval, my successor who assumes my duties in writing will receive all of my rights and benefits under the Loan Agreement. I still will be responsible under the Loan Agreement unless you release me in writing. The Loan Agreement will extend to your assigns or successors.

EXTENSION OF CREDIT CHARGES

If an Applicable Law that sets a maximum charge is finally interpreted so that the interest, loan charges, or fees collected or to be collected with the Loan Agreement exceed the permitted amount, then you will:

a. reduce the amount to the amount permitted; or
b. refund the excessive amount to me.

You may choose to apply this refund to the amount I owe or pay it directly to me. If you apply the refund to the amount I owe, the refund will be treated as a partial prepayment.

If I default, you will be able to charge me reasonable fees paid to an attorney who is not your employee to protect your interest in the Property.

DELIVERY OF NOTICES

Under the Loan Agreement, you and I will give notices to each other in writing. Any notice under the Loan Agreement will be considered given to me when it is mailed by first class mail or when actually delivered to me at my address if given by another means. You will give notice to the Property address unless I provide you a different address. I will notify you promptly of any change of address. I will comply with any reasonable procedure for giving a change of address that you provide. There will only be one address for notice under the Loan Agreement. Notice to me will be considered notice to all persons who are obligated under the Loan Agreement unless Applicable Law requires a separate notice. I may give you notice by delivering or mailing it by first class mail to the address provided by you, unless you require a different procedure. You, however, will not receive notice under the Loan Agreement until you actually receive it. Legal requirements governing notices subject to the Loan Agreement will prevail over conditions in the Loan Agreement.

GOVERNING LAW AND SEVERABILITY

The Loan Agreement will be governed by Texas law and federal law. If any provision in the Loan Agreement conflicts with any legal requirement, all non-conflicting provisions will remain effective.

RULES OF CONSTRUCTION

As used in the Loan Agreement:

a. words in the singular will mean and include the plural and vice versa; and
b. the word "may" gives sole discretion without imposing any duty to take action.

LOAN AGREEMENT COPIES

At the time the Loan Agreement is made, you will give me copies of all documents I sign.

TRANSFER OF INTEREST IN PROPERTY

"Interest in the Property" means any legal or beneficial interest. This term includes those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement (the intent of which is the transfer of title by me at a future date to a purchaser). If any part of the Property is sold or transferred without your prior written permission, you may require immediate payment of all I owe. You will not exercise this option if disallowed by Applicable Law. If you accelerate, you will give me notice. The notice of acceleration will allow me at least 21 days from the date the notice is given to pay all I owe. If I fail to timely pay all I owe, you may pursue any remedy allowed by the Loan Agreement without further notice or demand.

BORROWER'S RIGHT TO REINSTATE AFTER ACCELERATION

I have the right to stop you from enforcing the Loan Agreement any time before the earliest of:

a. 5 days before sale of the Property under any power of sale included in the Loan Agreement;
b. the day required by Applicable Law for the termination of my right to reinstate; or
c. the entry of a judgment enforcing the Loan Agreement.

I can stop the enforcement of the Loan Agreement and reinstate the Loan Agreement if all the following conditions are met:

a. You are paid what I owe under the Loan Agreement as if no acceleration had occurred;
b. I cure any default of any promise or agreement;
c. You are paid all expenses allowed by Applicable Law, including reasonable attorneys' fees and other fees incurred for the purpose of protecting your interest in the Property and rights under the Loan Agreement;
d. I comply with any reasonable requirement to assure you that your interest in the Property will remain intact; and
e. I comply with any reasonable requirement to assure you that my ability to pay what I owe will remain intact.

You may require me to pay for the reinstatement in one or more of the following forms:

a. cash;
b. money order;
c. certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are federally insured; or
d. Electronic Funds Transfer.

Upon reinstatement, the Loan Agreement will remain effective as if no acceleration had occurred. However, this right to reinstate will not apply if I sell or transfer any interest in the Property without your permission.

SALE OF NOTE, CHANGE OF LOAN SERVICER, NOTICE OF GRIEVANCE, LENDER'S RIGHT TO COMPLY

A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the

change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA.

Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section.

No agreement between you and me or any third party will limit your ability to comply with your duties under the Loan Agreement and the Applicable Law.

You and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law.

You and I intend to conform the Loan Agreement to the provisions of Applicable Law. If any part of the Loan Agreement is in conflict with the Applicable Law, then that part will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Your right to correct any violation will survive my paying off the Loan Agreement. My right to correct will override any conflicting provision of the Loan Agreement.

Your right to comply as provided in this Section will survive the payoff of the Loan Agreement. The provisions of this Section will supersede any inconsistent provision of the Loan Agreement.

HAZARDOUS SUBSTANCES

Hazardous Substances:

a. "Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials;
b. "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection;
c. "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and
d. "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. I will not do, or allow anyone else to do, anything affecting the Property:

a. that is in violation of any Environmental Law;
b. that creates an Environmental Condition; or
c. that, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property.

The presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and for the maintenance of the Property are allowed. This includes Hazardous Substances found in consumer products.

I will promptly give you written notice of:

a. any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which I have actual knowledge;
b. any Environmental Condition, including any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and
c. any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property.

If I learn that, or am notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, I promptly will take all necessary remedial actions in accordance with Environmental Law. You will have no obligation for an Environmental Cleanup.

ACCELERATION AND REMEDIES

You will give me notice prior to acceleration if I am in default under the Loan Agreement. The notice will specify:

a. the default;
b. the action required to cure the default;
c. a date, not less than 21 days from the date you give me notice, to cure the default; and
d. that my failure to cure the default on or before the specified date will result in acceleration of all that I owe under the Loan Agreement and sale of the Property.

You will inform me of my right to reinstate after acceleration. If the default is not cured before the specified date, you have the option to require immediate payment in full of all I owe. If you are not paid all I owe, you may sell the Property or seek other remedies allowed by Applicable Law without further notice. You may collect your reasonable expenses incurred in seeking the remedies provided in this Section. These expenses may include court costs, attorneys' fees, and costs of title search.

I understand the power of sale is not a confession of judgment or a power of attorney to confess judgment or an appearance by me in a judicial proceeding. If the Property is sold under this Section I or my successors will immediately give possession of the Property to the purchaser. If I do not, I or anyone residing on the Property may be removed by writ of possession.

ASSIGNMENT OF RENTS, APPOINTMENT OF RECEIVER, LENDER IN POSSESSION

As additional security, I assign to you the rents of the Property, provided that I have the right, prior to acceleration or abandonment of the Property, to collect and retain the rents as they become due.

Upon acceleration or abandonment, you, by agent or by court-appointed receiver, will be entitled to enter, take possession, manage the Property, and collect due and past due rents. All rents you or the court-appointed receiver collect will be applied first to payment of the costs of management of the Property and collection of rents, including receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Security Document. You and the receiver will be liable to account only for rents received.

POWER OF SALE

You have a fully enforceable lien on the Property. Your remedies for my default include an efficient means of foreclosure under the law. You and the Trustee have all powers to conduct a foreclosure. If you choose to use the power of sale, you will give me notice of the time, place and terms of the sale by posting and filing notice at least 21 days before the sale as provided by law. You will give me notice by mail as required by law. Failure to cure default on or before the date in the notice may result in acceleration of the amount that I owe under this Loan Agreement. The notice will inform me of my right to reinstate after acceleration and assert in court that I am not in default or any other defense to acceleration or sale. If I do not cure the default on or before the date in the notice, you, at your option, may declare all that I owe under this Loan Agreement to be immediately due and payable and may invoke the power of sale and any other remedies permitted by Applicable Law. The sale will be conducted at a public place. The sale will be held:

a. on the first Tuesday of a month;
b. at a time stated in the notice or no later than 3 hours after the time; and
c. between 10:00 a.m. and 4:00 p.m.

I allow the Trustee to sell the Property to the highest bidder for cash in one or more pieces and in any order the Trustee determines. You may purchase the Property at any sale.

Trustee will give a Trustee's deed to the foreclosure sale purchaser. A Trustee's deed will convey:

a. good title to the Property; and
b. title with promises of general warranty from me.

I will defend the purchaser's title to the Property against all claims and demands. The description of facts contained in the Trustee's deed will be sufficient to legally prove the truth of the statements made in the deed. Trustee will apply the proceeds of the sale in the following order:

a. to all expenses of the sale, including court costs and reasonable Trustee's and attorneys' fees;
b. what I owe; and
c. any excess to the person or persons legally entitled to it.

If the Property is sold through a foreclosure sale governed by this Section, I or any person in possession of the Property through me, will give up possession of the Property without delay. A person who does not give up possession is a holdover and may be removed by a court order.

RELEASE

Upon payment of all that I owe under this Loan Agreement, you will cancel and return the Note to me and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the lien to a lender that is refinancing the Loan Agreement. If you cannot, you will provide me with a discharge and release of all obligation under the loan. I will pay only the cost of recording the release of lien.

LENDER'S RIGHTS AND BORROWER'S RESPONSIBILITIES

You are entitled to all rights, superior title, liens and equities owned or claimed by any grantor or holder of any liens and debts due before the signing of the Loan Agreement. You may acquire these rights by assignment or the holder may release them upon payment.

Each person who signs the Security Document is responsible for each promise and duty in the Security Document.

Unless prohibited by Applicable Law, this Section will not:

a. impair in any way the Loan Agreement or your right to collect all that I owe under the Loan Agreement; or
b. affect your right to any promise or condition of the Loan Agreement.

TRUSTEES AND TRUSTEE LIABILITY

One or more Trustees acting alone or together may exercise or perform all rights, remedies and duties of the Trustee under the Loan Agreement. You may remove or change any Trustee (e.g., add one or more Trustees or appoint a successor Trustee to any Trustee). This removal or change of Trustee must be in writing and may be:

a. at your option;
b. with or without cause; and
c. by power of attorney or otherwise.

The substitute, additional or successor Trustee will receive, the title, rights, remedies, powers and duties under the Loan Agreement and Applicable Law.

Trustee may rely upon any notice, request, consent, demand, statement or other document reasonably believed by Trustee to be valid. Trustee will not be liable for any act or omission unless the act or omission is willful.

DEFAULT

Any default of my agreements with you will be a default of this Security Document.

SUBROGATION

If I ask, you will use proceeds from the Loan Agreement to pay off all valid outstanding liens against the Property. You will then own all rights, superior titles, liens, and interests owned or claimed by any owner or holder of an outstanding lien or debt. You own these things whether the lien or debt is transferred to you or whether it is released by the holder upon payment.

PARTIAL INVALIDITY

If any portion of the sums secured by this Security Document cannot be lawfully secured, payments minus those sums will be applied first to the portions not secured. If any charge provided for in this Loan Agreement, separately or together with other charges that are considered part of this Loan Agreement, violates Applicable Law, the charge is reduced to the extent necessary to eliminate the violation. Lender will refund the amount of interest or other charges paid to Lender in excess of the amount permitted by Applicable Law. At Lender's option, the amount in excess will either be refunded directly to me or will be applied to reduce the principal of the debt.

REQUEST FOR NOTICE OF DEFAULT
AND FORECLOSURE UNDER SUPERIOR
MORTGAGES OR SECURITY DOCUMENTS

You and I request that the holder of any mortgage, security document or other claim with a lien that has priority over this Security Document give you Notice, at your address listed on page 1 of this Security Document, of any default under the superior claim and of any sale or other foreclosure action.

BY SIGNING BELOW, I accept and agree to the terms and promises contained in the Loan Agreement and in any Rider I sign which is recorded with it. (DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. I MUST RECEIVE A COPY OF ANY DOCUMENT I SIGN.)

_____ _____(seal)
-Borrower

Printed Name:_____
(Please Complete)

_____(seal)
-Borrower

_____

Printed Name:_____
(Please Complete)

_____(seal)
-Borrower

_____(seal)
-Borrower

STATE OF TEXAS
County of _____

Before me, a notary public, on this day personally appeared _____, known to me (or proved to me on the oath of _____ or through _____ _____) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that _____ executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 20____.

(Seal)

_____
Notary Public

Figure: 7 TAC §90.604(a)(12)

TEXAS HOME IMPROVEMENT MECHANIC'S LIEN CONTRACT FOR IMPROVEMENT AND POWER OF SALE

(Second Lien)

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

DATE_____
ACCOUNT/CONTRACT NO. _____

DEFINITIONS

(A) "Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker. "I" or "me" means the Owner.

(B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies. "You" or "your" means the Contractor.

(C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies.

(D) "Trustee" means (name of Trustee), whose address is (address of Trustee, including county).

(E) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).

(F) "Work" means the construction project as agreed to in writing between the Owner and Contractor.

(G) "Completion Date" means (date on which the Work will be completed).

(H) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement and Power of Sale.

CONSTRUCTION OF IMPROVEMENTS

You agree to furnish and pay for all labor and material needed to complete the Work within _____ days from the date of this Contract. The Work will be performed on the Property in a good and workmanlike manner.

CONTRACT PRICE

I agree to pay, or cause to be paid, to you, or to your order, the sum of _____dollars (U.S. $_____) when the Work is completed.

TRANSFER OF LIEN

You transfer to Lender all of your rights and interests in this Contract.

COMPLETION BY CONTRACTOR, BUT NOT LENDER

You will complete the Work by the Completion Date. Lender is not responsible for completing the Work. Lender is not a guarantor of your performance. You will indemnify and hold Lender harmless against all claims related to the Work.

PARTIAL LIEN

If you do not complete the Work by the Completion Date in a good and workmanlike manner, then Lender will have a valid lien for the contract price, less the amount reasonably necessary to complete the Work. As an alternative, Lender may choose to complete the Work and the lien will be valid for the contract price.

CHANGES AND EXTRAS

All labor or material furnished outside of this Contract must be agreed upon in writing or it will be considered as performed under the original Contract and you will receive no extra money.

RECEIPTS AND RELEASES

If I ask, you will give me valid receipts and releases for the Work from any subcontractor, worker, and supplier.

NO WORK COMMENCED

This Contract is executed, acknowledged, and delivered before any labor has been performed and any material has been furnished for the Work.

TRUSTEE'S DUTIES

If you ask Trustee to foreclose this lien, Trustee will:

1. give notice of the foreclosure sale as required by the Texas Property Code;

2. sell and grant all or part of the Property "AS IS":

    a. to the highest bidder for cash;
    b. subject to prior liens and exceptions to conveyance and warranty; and
    c. without representation or warranty;

3. pay the proceeds of the sale, in this order:

    a. expenses of foreclosure, including Trustee's reasonable fee;
    b. the unpaid amount of principal, interest, attorneys' fees, and other charges due you;
    c. any amount required by law to be paid; and
    d. any balance to me; and

4. be indemnified by you for all costs, expenses, and liabilities incurred by Trustee in performance of Trustee's duties under this Contract.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Note: The following notice complies with Texas Property Code §41.007. In this notice, the terms "you" and "your" refer to the Owner.

IMPORTANT NOTICE: YOU AND YOUR CONTRACTOR ARE RESPONSIBLE FOR MEETING THE TERMS AND CONDITIONS OF THIS CONTRACT. IF YOU SIGN THIS CONTRACT AND YOU FAIL TO MEET THE TERMS AND CONDITIONS OF THIS CONTRACT, YOU MAY LOSE YOUR LEGAL OWNERSHIP RIGHTS IN YOUR HOME. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW.

_____
Owner

_____
Owner

_____
Contractor

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by __(name of owner)_____.

_____
Notary Public

(Seal)

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by __(name of contractor)_____.

_____
Notary Public

(Seal)

ASSIGNMENT

This lien is transferred and assigned to __(third party lender)_____.

_____
Contractor

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by __(name of contractor)_____.

_____
Notary Public

(Seal)

Figure: 7 TAC §90.604(a)(16)

TEXAS HOME IMPROVEMENT
DEED OF TRUST
ASSIGNMENT OF CONTRACTOR'S LIEN
(Second Lien)

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

DEFINITIONS

(A) "Borrower" is _____. Borrower's address is _____.

(B) "Contractor" is _____. Contractor's address is _____.

(C) "Lender" is _____. Lender's address is _____.

(D) "Trustee" is _____. Trustee's address is _____.

(E) "I" or "me" means _____, the grantor under this Deed of Trust and the person who signed the Note ("Borrower").

(F) "Loan Agreement" means the Contract, Note, Security Document, Deed of Trust, any other related document, or any combination of those documents, under which Lender has made a loan to me.

(G) "Deed of Trust" means this document, which is dated _____, together with all riders to this document.

(H) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe Lender is _____ dollars (U.S. $_____) plus interest.

(I) "Property" means the property at (list address of the Property), whose legal description is (list legal description of the Property).

(J) "Applicable Law" means all controlling applicable federal, state, and local law.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or the Property by a condominium association, homeowners association, or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section ___ of this Deed of Trust.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: damage or destruction of the Property; condemnation or other taking of all or any part of the Property; conveyance instead of condemnation; or misrepresentations or omissions related to the value or condition of the Property.

(O) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amounts under this Deed of Trust.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 *et seq.*) and Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Deed of Trust, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest" means any party that has taken title to the Property.

(R) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Deed of Trust. Such an arrangement usually takes the form of a long-term "ground lease."

(S) "Contract" means the Texas Home Improvement Mechanic's Lien Contract for Improvement, Power of Sale, and Deed of Trust.

(T) "Lien" means the Mechanic's and Materialman's Lien on the Property that results from the Contract and the Work performed. The Lien includes all existing and future improvements, easements, and rights in the Property.

TRANSFER OF RIGHTS IN THE PROPERTY

I give the Property to Trustee to ensure Lender is repaid the debt evidenced by my Note dated _____ and any renewal or extension, to ensure Lender is repaid any sums (with interest) Lender advances to protect the security of this Deed of Trust, and to guarantee my promises. I give to the Trustee, in trust, with power of sale, the Property located in _____ County at *(Street Address) (City) (State) (Zip Code)* and further described as:

(Legal Description)

The security interest in the Property includes existing and future improvements, easements, fixtures, attachments, replacements and additions to the Property, insurance refunds, and proceeds.

I promise that I own the Property and have the right to grant Lender an interest in it. I also promise that the Property is free of any lien, except liens that are publicly recorded. I promise that I will generally defend the title to the Property. I will be responsible for Lender's losses that result from a conflicting ownership right in the Property. Any default under my agreements with Lender will be a default of this Deed of Trust.

LENDER AND I PROMISE:

PAYMENT OF LATE CHARGES AND PREPAYMENT

I will timely pay the principal, interest, and any other amounts due under the Loan Agreement. I will comply with the requirements of my escrow account under the Loan Agreement. I will make payments in U.S. currency. If any check is returned to Lender unpaid, Lender may select the form of future payments including:

a. cash;
b. money order;
c. certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are federally insured; or
d. Electronic Funds Transfer.

I will make payments to the location as Lender directs. Lender will apply my payments against the Loan Agreement only when they are received at the designated location. Lender may change the location for payments if Lender gives me notice.

Lender may return any partial payment that does not bring the account current. Lender may accept any payment or partial payment that does not bring the account current without losing Lender's rights to refuse full or partial payments in the future. I will not use any offset or claim against Lender to relieve me from my duty to make payments under the Loan Agreement.

FUNDS FOR ESCROW ITEMS

I will pay Lender an amount ("Funds") for:

a. taxes and assessments and other items that can take priority over Lender's security interest in the Property under the Loan Agreement;
b. leasehold payments or Ground Rents on the Property, if any; and
c. premiums for any insurance Lender requires under the Loan Agreement.

These items are called "Escrow Items." At any time during the term of the Loan Agreement, Lender may require me to pay Community Association Dues, Fees, and Assessments, if any, as an Escrow Item.

I will promptly give Lender all notices of amounts to be paid. I will pay Lender the Funds for Escrow Items unless Lender, at any time, waives my duty to pay Lender. Any escrow waiver must be in writing. If Lender waives my duty to pay Lender the Funds, I will pay, at Lender's direction, the amounts due for waived Escrow Items. If Lender requires, I will give Lender receipts showing timely payment. My duty to make Escrow Item payments and to provide receipts is an independent promise in the Loan Agreement.

If Lender grants me an escrow waiver, Lender may require me to pay the waived Escrow Items. If I fail to directly pay the waived Escrow Items, Lender may use any right given to Lender in the Loan Agreement. Lender may pay waived Escrow Items and require me to repay Lender. Lender may cancel the waiver for Escrow Items at any time by a notice that complies with the Loan Agreement. If Lender cancels the waiver, I will pay Lender all Funds that are then required under this Section.

At any time Lender may collect and hold Funds in an amount:

a. to permit Lender to apply the Funds at the time specified under RESPA; and
b. not to exceed the maximum amount Lender may require under RESPA.

Lender will estimate the amount of Funds due on the basis of current data and reasonable estimates of future expenses for Escrow Items or otherwise, according to Applicable Law. The Funds will be held in an institution whose deposits are federally insured (including Lender, if Lender's deposits are insured) or in any Federal Home Loan Bank.

Lender will timely pay Escrow Items as required by RESPA. Lender will not charge me a fee for maintaining or handling my escrow account. Lender is not required to pay me any interest on the amounts in my escrow account. Lender will give me an annual accounting of the Funds as required by RESPA. If there is a surplus in my escrow account, Lender will follow RESPA. If there is a shortage or deficiency, as defined by RESPA, Lender will notify me, and I will pay Lender the amount necessary to make up the shortage or deficiency. I will repay the shortage or deficiency in no more than twelve monthly payments. Lender will promptly return to me any Funds after I have paid the Loan Agreement in full.

CHARGES AND LIENS

I will timely pay all taxes, assessments, charges, and fines relating to the Property that can take priority over this Deed of Trust. I also will timely pay leasehold payments or Ground Rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. If these items are Escrow Items, I will pay them as required by the Loan Agreement. I will promptly satisfy any lien that has priority over this Deed of Trust unless I:

a. agree in writing to pay the amount secured by the lien in a manner acceptable to Lender and only so long as I comply with my agreement;
b. contest the lien in good faith by stopping the enforcement of the lien through legal proceedings (this contest must be satisfactory to Lender); or
c. obtain an agreement from the holder of the lien that is satisfactory to Lender.

If Lender determines that any part of the Property is subject to a lien that can take priority over this Deed of Trust, Lender may give me a notice identifying the lien. I will satisfy the lien or take one or more of the actions described above in this Section within 10 days of the date of the notice.

PROPERTY INSURANCE

I WILL INSURE THE CURRENT AND FUTURE IMPROVEMENTS TO THE PROPERTY AGAINST LOSS BY FIRE, HAZARDS INCLUDED WITHIN THE TERM "EXTENDED COVERAGE," AND ANY OTHER HAZARDS INCLUDING EARTHQUAKES AND FLOODS, AS LENDER MAY REQUIRE. I WILL KEEP THIS INSURANCE IN THE AMOUNTS (INCLUDING DEDUCTIBLE LEVELS) AND FOR THE PERIODS THAT LENDER REQUIRES. LENDER MAY CHANGE THESE INSURANCE REQUIREMENTS DURING THE TERM OF THE LOAN AGREEMENT. I HAVE THE RIGHT TO CHOOSE AN INSURANCE CARRIER THAT IS ACCEPTABLE TO LENDER. LENDER WILL EXERCISE LENDER'S RIGHT TO DISAPPROVE REASONABLY. I MAY PROVIDE ANY INSURANCE REQUIRED BY THIS DEED OF TRUST EITHER THROUGH EXISTING POLICIES OWNED OR CONTROLLED BY ME OR THROUGH EQUIVALENT COVERAGE FROM ANY INSURANCE COMPANY AUTHORIZED TO TRANSACT BUSINESS IN TEXAS.

I will pay any fee charged by the Federal Emergency Management Agency for the review of any flood zone determination. Lender may require me to pay either:

a. a one-time charge for flood zone determination, certification and tracking services; or
b. a one-time charge for flood zone determination and certification services; and subsequent charges each time re-mappings or similar changes occur that reasonably might affect the determination or certification.

If I do not keep any required insurance, Lender may obtain insurance at Lender's option and at my expense. Lender is not required to purchase any type or amount of insurance. Any insurance Lender buys will always protect Lender, but may not protect me, my equity in the Property, my contents in the Property or protect me from certain hazards or liability. I understand that this insurance may cost significantly more than insurance I can purchase. I will owe Lender for the cost of any insurance that Lender buys under this Section. Interest will be charged on this amount at the interest rate used by the Note. The interest will be charged from the date Lender made the payment. Lender will give me notice of the amounts I owe under this Section.

Lender may disapprove any insurance policy or renewal. Any insurance policy must include a standard mortgage clause, and must name Lender as mortgagee or a loss payee. I will give Lender all insurance premium receipts and renewal notices, if Lender requests. If I obtain any optional insurance to cover damage or destruction of the Property, I will name Lender as a loss payee. In the event of loss, I will give notice to Lender and the insurance company. Lender may file a claim if I do not file one promptly. Lender will apply insurance proceeds to repair or restore the Property unless Lender's interest will be reduced or it will be economically unreasonable to perform the Work. Lender may hold the insurance proceeds until Lender has had an opportunity to inspect the Work and Lender considers the Work to be acceptable. The insurance proceeds may be given in a single payment or multiple payments as the Work is completed. Lender will not pay any interest on the insurance proceeds. If I hire a public adjuster or other third party, I am responsible for the fee. It will not be paid from the insurance proceeds. The insurance proceeds will be applied to the amount I owe if Lender's interest will be reduced or if the Work will be economically unreasonable to perform. Lender will pay me any excess insurance proceeds. Lender will apply insurance proceeds in the order provided by the Loan Agreement.

If I abandon the Property Lender may file, negotiate, and settle any insurance claim. If the insurance company offers to settle a claim and I do not respond within thirty days to a notice from Lender, then Lender may settle the claim. The 30-day period will begin when the notice is given. If I abandon the Property, fail to respond to the offer of settlement, or Lender forecloses on the Property, I assign to Lender:

a. my rights to any insurance proceeds in an amount not greater than what I owe; and
b. any of my other rights under insurance policies covering the Property.

Lender may apply the proceeds to repair or restore the Property or to the amount that I owe.

PRESERVATION, MAINTENANCE, PROTECTION, AND INSPECTION OF THE PROPERTY

I will not destroy, damage, or impair the Property, allow it to deteriorate, or commit waste. Whether or not I live in the Property, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to the Property to avoid further deterioration or damage unless Lender and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring the Property only if Lender releases the insurance or condemnation proceeds for the damage to or the taking of the Property. Lender may release proceeds for the repairs and restoration in a single payment or in a series of payments as the Work is completed. I still am obligated to complete repairs or restoration of the Property even if there are not enough proceeds to complete the Work. If this Deed of Trust secures a unit in a condominium or planned unit development, I will perform all of my obligations under the declaration or covenants creating or governing the condominium or planned unit development, and any other relevant document. Lender or Lender's agent may inspect the Property. Lender may inspect the interior of the Property with reasonable cause. Lender will give me notice stating reasonable cause when or before the interior inspection occurs.

PROTECTION OF LENDER'S INTEREST IN THE PROPERTY AND RIGHTS UNDER THE DEED OF TRUST

Lender may do whatever is reasonable to protect Lender's interest in the Property, including protecting or assessing the value of the Property, and securing or repairing the Property. Lender may do this when:

a. I fail to perform the promises and agreements contained in the Loan Agreement;
b. a legal proceeding might significantly affect Lender's interest in the Property or rights under the Loan Agreement (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may have priority over the Loan Agreement or to enforce laws or regulations); or
c. I abandon the Property.

In order to protect Lender's interest in the Property, Lender may:

a. pay amounts that are secured by a lien on the Property which has or will have priority over the Loan Agreement;
b. appear in court; or
c. pay reasonable attorneys' fees.

Lender may enter the Property to secure it. To secure the Property, Lender may make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Lender has no duty to secure the Property. Lender is not liable for failing to take any action listed in this Section. Any amounts Lender pays under this Section will become my additional debt secured by the Loan Agreement. These amounts will earn interest at the rate specified in the Loan Agreement. The interest will begin on the date the amounts are paid. Lender will give me notice requesting payment of these amounts. If the Loan Agreement is on a leasehold, I will comply with the lease.

ASSIGNMENT OF MISCELLANEOUS PROCEEDS AND FORFEITURE

Any Miscellaneous Proceeds will be assigned and paid to Lender. If the Property is damaged, Miscellaneous Proceeds will be applied to restore or repair the Property. Lender will only do this if Lender's interest in the Property will not be reduced and if the work will be economically reasonable to perform. Lender will have the right to hold Miscellaneous Proceeds until Lender inspects the Property to ensure the work has been completed to Lender's satisfaction. Lender must make the inspection promptly. Lender may release proceeds for the work in a single payment or in multiple payments as the work is completed. Lender is not required to pay me any interest on the Miscellaneous Proceeds. The Miscellaneous Proceeds will be applied to the amount I owe if Lender's interest in the Property will be reduced or the work will be economically unreasonable to perform. Lender will pay me any excess Miscellaneous Proceeds. Lender will apply Miscellaneous Proceeds in the order provided by the Loan Agreement.

Lender will apply all Miscellaneous Proceeds to the amount I owe in the event of a total taking, destruction, or loss in value of the Property. Lender will apply the Miscellaneous Proceeds even if all payments are current. Lender will give any excess Miscellaneous Proceeds to me.

A partial loss can include a taking, destruction, or loss in value. In the event of a partial loss, the Miscellaneous Proceeds will be applied in one of two ways:

a. If the fair market value of the Property immediately before the partial loss is less than the amount I owe immediately before the partial loss, then Lender will apply all Miscellaneous Proceeds to the amount I owe even if all payments are current.
b. If the fair market value of the Property immediately before the partial loss is equal to or greater than the amount I owe immediately before the partial loss, then Lender will apply Miscellaneous Proceeds to the amount I owe in the following manner:

    1. The amount of Miscellaneous Proceeds multiplied by the result of,
    2. The amount I owe immediately before the partial loss divided by the fair market value of the Property immediately before the partial loss.

Lender and I can agree otherwise in writing. Lender will give any excess Miscellaneous Proceeds to me.

If I abandon the Property, Lender may apply Miscellaneous Proceeds either to restore or repair the Property, or to the amount I owe.

Damage to the Property caused by a third party may result in a civil proceeding. If Lender gives me notice that the third party offers to settle a claim for damages to the Property and I fail to respond to Lender within thirty days, Lender may accept the offer and apply the Miscellaneous Proceeds either to restore or repair the Property or to the amount I owe. If the proceeding results in an award of damages, Lender will apply the Miscellaneous Proceeds according to this Section.

FORBEARANCE NOT A WAIVER

If Lender doesn't enforce Lender's rights every time, Lender can still enforce them later.

JOINT AND SEVERAL LIABILITY, DEED OF TRUST EXECUTION, SUCCESSORS OBLIGATED

I understand that Lender may seek payment from only me without first looking to any other Borrower.

Any person who signs this Deed of Trust, but not the Note:

a. will not have to repay the Note;
b. is not a surety or guarantor; and,
c. only gives a security interest in the Property under this Deed of Trust.

The Lien against the Property is voluntary. Each owner and each owner's spouse consent to the Lien. Lender and I may modify the Loan Agreement in writing. Lender must approve my successor in writing. My successor will receive all of my rights and benefits under the Loan Agreement. I still will be responsible under the Loan Agreement unless Lender releases me in writing. The Loan Agreement will extend to Lender's assigns or successors.

USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than Applicable Law allows.

MAILING OF NOTICES TO BORROWER

Lender or I may mail or deliver any notice to the address above. Lender or I may change the notice address by giving written notice. Lender's duty to give me notice will be satisfied when Lender mails it.

APPLICATION OF LAW

Federal law and Texas law apply to this Loan Agreement.

RULES OF CONSTRUCTION

As used in the Loan Agreement:

a. words in the singular will mean and include the plural and vice versa; and
b. the word "may" gives discretion without imposing any duty to take action.

LOAN AGREEMENT COPIES

At the time the Loan Agreement is made, Lender will give me copies of all documents I sign.

DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the Property is sold or transferred without Lender's prior written consent, Lender may require immediate payment in full of all that I owe under this Loan Agreement. Lender will not exercise this option if Applicable Law prohibits.

If Lender exercises this option, Lender will give me notice that Lender is demanding payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, Lender may use any remedy allowed by the Loan Agreement.

LENDER, CONTRACTOR, AND I PROMISE AND AGREE:

ACCELERATION AND REMEDIES

Lender will give me notice prior to acceleration if I am in default under the Loan Agreement. The notice will specify:

a. the default;
b. the action required to cure the default;
c. a date, not less than 21 days from the date Lender gives me notice, to cure the default; and
d. that my failure to cure the default on or before the specified date will result in acceleration of all that I owe under the Loan Agreement and sale of the Property.

Lender will inform me of my right to reinstate after acceleration. If the default is not cured before the specified date, Lender has the option to require immediate payment in full of all I owe. If Lender is not paid all I owe, Lender may sell the Property or seek other remedies allowed by Applicable Law without further notice. Lender may collect Lender's reasonable expenses incurred in seeking the remedies provided in this Section. These expenses may include court costs, attorneys' fees, and costs of title search.

I understand the power of sale is not a confession of judgment or a power of attorney to confess judgment or an appearance by me in a judicial proceeding. If the Property is sold under this Section I or my successors will immediately give possession of the Property to the purchaser. If I do not, I or anyone residing on the Property may be removed by writ of possession.

POWER OF SALE

Lender has a fully enforceable lien on the Property. Lender's remedies for my default include an efficient means of foreclosure under the law. Lender and the Trustee have all powers to conduct a foreclosure. If Lender chooses to use the power of sale, Lender will give me notice of the time, place and terms of the sale by posting and filing notice at least 21 days before the sale as provided by law. Lender will give me notice by mail as required by law. Failure to cure default on or before the date in the notice may result in acceleration of the amount that I owe under this Loan Agreement. The notice will inform me of my right to reinstate after acceleration and assert in court that I am not in default or any other defense to acceleration or sale. If I do not cure the default on or before the date in the notice, Lender, at Lender's option, may declare all that I owe under this Loan Agreement to be immediately due and payable and may invoke the power of sale and any other remedies permitted by Applicable Law. The sale will be conducted at a public place. The sale will be held:

a. on the first Tuesday of a month;
b. at a time stated in the notice or no later than 3 hours after the time; and
c. between 10:00 a.m. and 4:00 p.m.

I allow the Trustee to sell the Property to the highest bidder for cash in one or more pieces and in any order the Trustee determines. Lender may purchase the Property at any sale.

Trustee will give a Trustee's deed to the foreclosure sale purchaser. A Trustee's deed will convey:

a. good title to the Property; and
b. title with promises of general warranty from me.

I will defend the purchaser's title to the Property against all claims and demands. The description of facts contained in the Trustee's deed will be sufficient to legally prove the truth of the statements made in the deed. Trustee will apply the proceeds of the sale in the following order:

a. to all expenses of the sale, including court costs and reasonable Trustee's and attorneys' fees;
b. what I owe; and
c. any excess to the person or persons legally entitled to it.

If the Property is sold through a foreclosure sale governed by this Section, I or any person in possession of the Property through me, will give up possession of the Property without delay. A person who does not give up possession is a holdover and may be removed by a court order.

BORROWER'S RIGHT TO REINSTATE AFTER ACCELERATION

I have the right to stop Lender from enforcing the Loan Agreement any time before the earliest of:

a. 5 days before sale of the Property under any power of sale included in the Loan Agreement;
b. the day required by Applicable Law for the termination of my right to reinstate; or
c. the entry of a judgment enforcing the Loan Agreement.

I can stop the enforcement of the Loan Agreement and reinstate the Loan Agreement if all the following conditions are met:

a. Lender is paid what I owe under the Loan Agreement as if no acceleration had occurred;
b. I cure any default of any promise or agreement;
c. Lender is paid all expenses allowed by Applicable Law, including reasonable attorneys' fees and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under the Loan Agreement;
d. I comply with any reasonable requirement to assure Lender that Lender's interest in the Property will remain intact; and
e. I comply with any reasonable requirement to assure Lender that my ability to pay what I owe will remain intact.

Lender may require me to pay for the reinstatement in one or more of the following forms:

a. cash;
b. money order;
c. certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are federally insured; or
d. Electronic Funds Transfer.

Upon reinstatement, the Loan Agreement will remain effective as if no acceleration had occurred. However, this right to reinstate will not apply if I sell or transfer any interest in the Property without Lender's permission.

ASSIGNMENT OF RENTS, APPOINTMENT OF RECEIVER, LENDER IN POSSESSION

As additional security, I assign to you the rents of the Property, provided that you have the right, prior to acceleration or abandonment of the Property, to collect and retain the rents as they become due. Upon acceleration or abandonment, you, by agent or by court-appointed receiver, will be entitled to enter, take possession, manage the Property, and collect due and past due rents. All rents you or the court-appointed receiver collect will be applied first to payment of the cost of management of the Property and collection of rents, including receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Deed of Trust. You and the receiver will be liable to account only for rents received.

RELEASE

Lender will cancel and return the Note to me and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the Lien to a Lender that is refinancing the Loan Agreement. I will pay only the cost of recording the release of lien.

TRUSTEES AND TRUSTEE LIABILITY

One or more Trustees acting alone or together may exercise or perform all rights, remedies and duties of the Trustee under the Loan Agreement. Lender may remove or change any Trustee (e.g., add one or more Trustees or appoint a successor Trustee to any Trustee). This removal or change of Trustee must be in writing and may be:

a. at Lender's option;
b. with or without cause; and
c. by power of attorney or otherwise.

The substitute, additional, or successor Trustee will receive the title, rights, remedies, powers, and duties under the Loan Agreement and Applicable Law.

Trustee may rely upon any notice, request, consent, demand, statement, or other document reasonably believed by Trustee to be valid. Trustee will not be liable for any act or omission unless the act or omission is willful.

ASSIGNMENT OF CONTRACTOR'S LIEN, COMMENCEMENT OF WORK

Contractor and I have entered into the Contract for improvements to be made to the Property. I will perform my duties under the Contract. Under the Contract, I gave Contractor a Lien on the Property. Contractor permanently transfers the Lien and any other interest Contractor has in the Property to Lender. As additional security, Contractor also agrees that the lien created by this Deed of Trust has priority over the Lien. The purpose of the Note is to pay in whole or in part the improvements to be made to the Property by the Contractor. Contractor and I agree that the Lien is for Lender's sole benefit. Any other interest Contractor has in the Property will be merged with the Lien, and may be enforced by Lender according to the terms of this Deed of Trust. Contractor and I further agree that no Work was performed or material delivered before the Contract was executed.

SUBROGATION

If I ask, Lender will use proceeds from the Loan Agreement to pay off all valid outstanding liens against the Property. Lender will then own all rights, superior titles, liens, and interests owned or claimed by any owner or holder of an outstanding lien or debt. Lender owns these things whether the lien or debt is transferred to Lender or whether it is released by the holder upon payment.

PARTIAL INVALIDITY

If any portion of the sums secured by this Deed of Trust cannot be lawfully secured, payments minus those sums will be applied first to the portions not secured. If any charge provided for in this Loan Agreement, separately or together with other charges that are considered part of this Loan Agreement, violates Applicable Law, the charge is reduced to the extent necessary to eliminate the violation. Lender will refund the amount of interest or other charges paid to Lender in excess of the amount permitted by Applicable Law. At Lender's option, the amount in excess will either be refunded directly to me or will be applied to reduce the principal of the debt.

RENEWAL AND EXTENSION

The Note secured by this Deed of Trust is renewed and extended, but not in extinguishment of the debt under the Contract identified in the paragraph entitled "Assignment of Contractor's Lien, Commencement of Work" and the Note.

SALE OF NOTE, CHANGE OF LOAN SERVICER, NOTICE OF GRIEVANCE, LENDER'S RIGHT TO COMPLY

A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA.

Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section.

No agreement between Lender and me or any third party will limit Lender's ability to comply with Lender's duties under the Loan Agreement and Applicable Law.

Lender and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law.

Lender and I intend to conform the Loan Agreement to the provisions of Applicable Law. If any part of the Loan Agreement is in conflict with the Applicable Law, then that part will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Lender's right to cure any violation will survive my paying off the Loan Agreement. My right to cure will override any conflicting provision of the Loan Agreement.

Lender's right to comply as provided in this Section will survive the payoff of the Loan Agreement. The provisions of this Section will supersede any inconsistent provision of the Loan Agreement.

HAZARDOUS SUBSTANCES

Hazardous Substances:

a. "Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials;
b. "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection;
c. "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and
d. "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. I will not do, or allow anyone else to do, anything affecting the Property:

a. that is in violation of any Environmental Law;
b. that creates an Environmental Condition; or
c. that, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property.

The presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and for the maintenance of the Property are allowed. This includes Hazardous Substances found in consumer products.

I will promptly give Lender written notice of:

a. any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which I have actual knowledge;
b. any Environmental Condition, including any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and
c. any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property.

If I learn that, or am notified by any governmental or regulatory authority, or any private party that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, I promptly will take all necessary remedial actions in accordance with Environmental Law. Lender will have no obligation for an Environmental Cleanup.

LENDER'S RIGHTS AND BORROWER'S RESPONSIBILITIES

Lender is entitled to all rights, superior title, liens, and equities owned or claimed by any grantor or holder of any liens and debts due before the signing of the Loan Agreement. Lender may acquire these rights by assignment or the holder may release them upon payment.

Each person who signs the Deed of Trust is responsible for each promise and duty in the Deed of Trust.

Unless prohibited by Applicable Law, this Section will not:

a. impair in any way the Loan Agreement or Lender's right to collect all that I owe under the Loan Agreement;
b. affect Lender's right to any promise or condition of the Loan Agreement.

DEFAULT

Any default of my agreements with Lender will be a default of this Deed of Trust.

REQUEST FOR NOTICE OF DEFAULT
----------AND FORECLOSURE UNDER SUPERIOR----------
MORTGAGES OR DEEDS OF TRUST

Lender and I request that the holder of any mortgage, deed of trust or other claim with a lien that has priority over this Deed of Trust give Lender notice, at Lender's address listed on this Deed of Trust, of any default under the superior claim and of any sale or other foreclosure action.

BY SIGNING BELOW, I accept and agree to the terms and promises contained in the Loan Agreement and in any rider I sign which is recorded with it. (DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. I MUST RECEIVE A COPY OF ANY DOCUMENT I SIGN.)

IN WITNESS WHEREOF, Borrower and Contractor have executed this Deed of Trust and Assignment of Contractor's Lien.

-Contractor

By:_____

_____

Printed Name:_____
(Please Complete)

_____

Printed Name:_____
(Please Complete)

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 _____ by __(name of owner)_____.

_____
Notary Public

(Seal)

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 _____ by ___(name of contractor)_____.

_____
Notary Public

(Seal)

Figure: 22 TAC §176.9

TEXAS MEDICAL BOARD [~~STATE BOARD OF MEDICAL EXAMINERS~~]
P.O. Box 2018, MC-263
Austin, Texas 78768-2018

HEALTH CARE LIABILITY CLAIMS REPORT

FILE ONE REPORT FOR EACH DEFENDANT LICENSEE.

PART I. COMPLETE FOR ANY COMPLAINT FILED IN A LAWSUIT.
Attach a copy of the Complaint and Expert Report. If an Expert Report is not filed with the Court at the time the lawsuit is filed, the Expert Report shall be filed with the Board within 30 days after it is received.

1. Name and address of insurer: _____

2. Defendant licensee: _____

   License number: _____

3. Plaintiff's name: _____

4. Policy number: _____

5. Date claim reported to insurer/self-insured licensee: _____

6. Cause No. Court County of Suit

   _____ _____ _____

7. Initial reserve amount after investigation: _____
(If a reserve is not determined within 30 days, report this data within 30 days after determination.)

_____ _____
Person completing this report Phone number

PART II. COMPLETE UPON SETTLEMENT OF THE CLAIM.
Attach a copy of any Court Order or Settlement Agreement. "Settlement" is defined in 22 TAC §176.1(3) [~~22 Tex. Admin. Code, Section 176.1(c)~~], and includes payment on a claim on which a lawsuit has not been filed and dismissal, settlement, or judgment in a lawsuit that is based on a health care liability claim.

8. Date of Settlement: _____

9. Type of Settlement:
- ☐ (1) Payment or agreement to pay a claim or lawsuit
- ☐ (2) Judgment in a lawsuit after trial
- ☐ (3) Dismissal or Non-suit of a Lawsuit
- ☐ (4) Other (please specify)

_____

10. Amount of indemnity agreed upon or ordered on behalf of this defendant: $_____.

Note: If percentage of fault was not determined by the court or insurer in the case of multiple defendants, the insurer may report the total amount paid for the claim followed by a slash and the number of insured defendants. (Example: $100,000/3)

11. Appeal, if known: _____ Yes _____ No. If yes, which party: _____

_____ _____
Person completing this report Phone number

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of Public Hearing Regarding the Issuance of Bonds

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") at 12:00 p.m. on July 16, 2007 at 1005 Congress Avenue, Suite 500 (Conference Room), Austin, Texas 78701, on the proposed issuance by the Issuer of one or more series of revenue bonds (the "Bonds") to provide financing and refinancing for the acquisition of single family mortgages in the State of Texas, pursuant to (i) its professional educators home loan program (the "Professional Educators Project"), (ii) its fire fighter and law enforcement or security officer home loan program (the "Fire Fighter and Law Enforcement or Security Officer Project") and (iii) its low income home loan program (the "Low Income Project") in accordance with Section 2306.553 of the Texas Government Code. The maximum aggregate face amount of the Bonds to be issued with respect to the Projects is $100,000,000. All interested persons are invited to attend the public hearing to express orally, or in writing, their views on the Professional Educators Project, the Fire Fighter and Law Enforcement or Security Officer Project, the Low Income Project and the issuance of the Bonds. The Bonds shall not constitute or create an indebtedness, general or specific, or liability of the State of Texas, or any political subdivision thereof. The Bonds shall never constitute or create a charge against the credit or taxing power of the State of Texas, or any political subdivision thereof. Neither the State of Texas, nor any political subdivision thereof shall in any manner be liable for the payment of the principal of or interest on the Bonds or for the performance of any agreement or pledge of any kind which may be undertaken by the Issuer and no breach by the Issuer of any agreements will create any obligation upon the State of Texas, or any political subdivision thereof. Further information with respect to the proposed Bonds will be available at the hearing or upon written request prior thereto addressed to David Long at the Texas State Affordable Housing Corporation, 1005 Congress Avenue, Suite 500, Austin, Texas 78701; 1-888-638-3555 ext. 402.

Individuals who require auxiliary aids in order to attend this meeting should contact Laura Ross, ADA Responsible Employee, at 1-888-638-3555, ext. 400 through Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to David Long at dlong@tsahc.org.

TRD-200702538
David Long
President
Texas State Affordable Housing Corporation
Filed: June 20, 2007

♦ ♦ ♦

Texas Building and Procurement Commission

Request for Proposal

The Texas Building and Procurement Commission (TBPC), on behalf of the Department of Family and Protective Services, announces the issuance of Request for Proposals (RFP) #303-7-11938. TBPC seeks a five or a ten year lease of approximately 23,290 square feet of office space in the Austin area, Travis County, Texas.

The deadline for questions is June 29, 2007 and the deadline for proposals is July 13, 2007 at 3:00 PM. The award date is July 27, 2007. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=71255.

TRD-200702486
Susan Maldonado
Acting General Counsel
Texas Building and Procurement Commission
Filed: June 18, 2007

♦ ♦ ♦

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 8, 2007, through June 14, 2007. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on June 20, 2007. The public comment period for this project will close at 5:00 p.m. on July 20, 2007.

FEDERAL AGENCY ACTIONS:

Applicant: Palace Exploration; Location: The project is located in East Matagorda Bay, in Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Palacios SE, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 785820; Northing: 3167697. Project Description: This project was previously coordinated under permit application 23919, which was placed on Public Notice on 23 May 2006. Permit 23919 was subsequently withdrawn. The application has been resubmitted and given tracking number SWG-2007-917. The applicant proposes to install, operate, and maintain structures and equipment necessary for

oil and gas drilling and production. The applicant proposes to dredge an 18,010-foot-long access channel and a 160-foot by 340-foot-long work area to accommodate a marine drilling barge and 210-foot by 60-foot by 2-foot shell pad, with 934 cubic yards of shell and gravel placed to create the pad. Approximately 59,969 cubic yards of bay bottom material will be dredged to create the access channel. The applicant proposes to side cast this material in segments ranging from 67 feet to 125 feet wide, and 0.5 feet deep, immediately adjacent to the access channel. The access channel will dog-leg to the south to avoid existing oyster reefs and shell hash in State Tract 274. If the well proves productive, a well protector platform will be constructed with attendant facilities. Expected well life is 10 years. Depth along the project site ranges from -8.29 feet below mean lower low water (MLLW) at the start of the proposed access channel, to -6.29 feet MLLW at the proposed well site. The access channel is proposed to be dredged to a maximum of -9.10 MLLW (dredging 0.81 feet) at the start of the access channel and -8.29 MLLW (dredging 2 feet) at the well site. Maximum draft of vessels traversing the access route is -7.5 feet. The applicant proposes to let the dredged area settle and repopulate naturally. As such, no compensatory mitigation is proposed. CCC Project No.: 07-0201-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-917 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Rosetta Resources Operating, L. P.; Location: The project is located within Sabine Lake, in portions of State Tracts (ST's) 30, 33, 36, and 39 in Jefferson County, Texas, and State Lease (SL) 19071, in Cameron Parish, Louisiana. The project can be located on the U.S.G.S. quadrangle maps entitled: Port Arthur North and Port Arthur South, Texas. Approximate (mid-point) UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 415301; Northing: 3305803. Project Description: The applicant proposes to install three 10-inch-diameter pipelines associated with well sites within Sabine Lake ST's 30, 33, 36, and 39 and SL 19071 in Cameron Parish, Louisiana. The work consists of installing, operating, and maintaining structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of typical marine barges and keyways, shell and gravel pads, production structures with attendant facilities, and flowlines. CCC Project No.: 07-0208-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-586 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Sunset Development, Inc.; Location: The project is located in wetlands adjacent to Seabrook Slough, on a 3.6-acre tract southwest of the Todville Road and Hammer Street intersection, in Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: League City, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 304814; Northing: 3272203. Project Description: The proposed project was announced in a public notice, which had a comment period that expired on 22 March 2007. Based on comments received from the public notice, the applicant chose to modify the site development plan to avoid impacts to a portion of the jurisdictional waters of the U.S. on the project site. The proposed mitigation plan and site development plan also changed due to comments from the original public notice. The applicant proposes to discharge 702.61 cubic yards of fill material into 0.874 acre of waters of the U.S. to construct a single-family residential development. The 0.874 acre of impact to jurisdictional waters of the U.S. is comprised of 0.83 acre of emergent wetlands, 0.03 acre of a headwater, and 0.014 acre of intertidal open waters. The applicant proposes to compensate for impacts to 0.874 acre of waters of the U.S. by creating 0.01 acre of intertidal open waters onsite and purchase 0.86 acre credits at the Greens Bayou Wetland Mitigation Bank. The proposed onsite mitigation area, 0.01 acre of intertidal open water creation, would be excavated to the same elevation as the adjacent intertidal open water and planted with desirable hydrophytic vegetation, which would also assist in onsite water quality functions. CCC Project No.: 07-0209-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-26 (Rev.) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Gary Hammett; Location: The project is located on Lots 1401 and 1402, Section 12, at 3910 Brewster Key in the Sea Isle residential subdivision, on the west end of Galveston Island, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Sea Isle, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 301015; Northing: 3225719. Project Description: The applicant proposes to fill an existing 24-foot-wide by 25-foot-long boat slip that is shared by two lots. The applicant proposes to place 66 cubic yards of fill below the highest annual tide line (HTL) to fill the slip. Depth at the project site ranges from -2.5 feet below the HTL at the landward end of the slip to -3.3 feet below the HTL at the terminus of the slip. No wetlands will be impacted by the proposed project. CCC Project No.: 07-0209-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-376 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200702521
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: June 19, 2007

♦ ♦ ♦

Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, and §403.301 and §403.3011, Texas Government Code; §5.102, Property Tax Code; and Chapter 271, Local Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #179a) from qualified, independent firms to provide pooled consulting services to the Comptroller. The successful respondent(s) will assist the Comptroller in conducting Appraisal Standards Reviews (ASR) of up to thirty-six (36) county appraisal districts throughout the state, as well as nineteen (19) follow-up reviews on an as-needed, as requested basis. The Comptroller reserves the right to select multiple contractors to participate in conducting the ASRs on a "pooled" basis, as set forth in the RFP. The successful respondent(s) will be expected to begin per-

formance of the contract or contracts, if any, on or about September 1, 2007, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, June 29, 2007, after 10:00 a.m., Central Zone Time (CZT) and during normal business hours thereafter. The Comptroller also made the complete RFP available electronically on the Electronic State Business Daily at: http://esbd.tbpc.state.tx.us after 10:00 a.m. (CZT) on Friday, June 29, 2007.

Non-Mandatory Letters of Intent and Questions: All Non-Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 463-3669, not later than 2:00 p.m. (CZT), on Friday, July 13, 2007. Official responses to questions received by the foregoing deadline will be posted electronically on the Electronic State Business Daily no later than Friday, July 20, 2007, or as soon thereafter as practical. Non-Mandatory Letters of Intent or Questions received after the deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be received in the Assistant General Counsel's Office at the address specified above (ROOM G-24) no later than 2:00 p.m. (CZT), on Friday, July 27, 2007. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit proposals by the foregoing deadline. Respondents shall be solely responsible for confirming the timely receipt of proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The Comptroller will make the final decision regarding the award of master contracts for assignments from the pool selected, if any. The Comptroller reserves the right to award one or more contracts under this RFP. The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. The Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - June 29, 2007, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - July 13, 2007, 2:00 p.m. CZT; Official Responses to Questions Posted - July 20, 2007, or as soon thereafter as practical; Proposals Due - July 27, 2007, 2:00 p.m. CZT; Contract Execution - September 1, 2007, or as soon thereafter as practical; Commencement of Project Activities - September 1, 2007, or as soon thereafter as practical.

TRD-200702537
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: June 20, 2007

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/25/07 - 07/01/07 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/25/07 - 07/01/07 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 07/01/07 - 07/31/07 is 8.25% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 07/01/07 - 07/31/07 is 8.25% for Commercial over $250,000.

[1] Credit for personal, family, or household use.

[2] Credit for business, commercial, investment, or other similar purpose.

TRD-200702528
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 19, 2007

♦ ♦ ♦

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 City Credit Union (Dallas) seeking approval to merge with Dallas Area Rapid Transit (DART) Federal Credit Union (Dallas). City Credit Union will be 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-200702533
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 20, 2007

♦ ♦ ♦

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 Qualtrust Credit Union (#1), Irving, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, volunteer or attend school in, businesses and other legal entities located within a 10-mile radius of the Qualtrust Credit Union member service facility located at 2100 W. Northwest Highway, Grapevine, Texas 76051, to be eligible for membership in the credit union.

An application was received from Qualtrust Credit Union (#2), Irving, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, volunteer or attend school in, businesses and other legal entities located within a 10-mile radius of the Qualtrust Credit Union member service facility located at 6201 E. Campus Circle Drive, Irving, Texas persons who live, work, worship, volunteer or attend school in, businesses and other legal entities located within a 10-mile radius of the Qualtrust Credit Union member service facility located at 2100 W. Northwest Highway, Grapevine, Texas 76051, to be eligible for membership in the credit union.

An application was received from MemberSource Credit Union, Houston, Texas to expand its field of membership. The proposal would permit employees of Spectra Energy Corp. and their subsidiaries, affiliates, or successors, who work in, are paid or supervised from Houston, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.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-200702532
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 20, 2007

♦ ♦ ♦

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

Memorial Hermann Credit Union, Houston, Texas - See *Texas Register* issue dated April 27, 2007.

Applications to Amend Articles of Incorporation - Approved

Beaumont Municipal Employees Credit Union, Beaumont, Texas - See *Texas Register* issue dated April 27, 2007.

TRD-200702534
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 20, 2007

♦ ♦ ♦

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 **July 30, 2007**. 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 July 30, 2007**. 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: Apex of Texas Homes, LP; DOCKET NUMBER: 2007-0682-WQ-E; IDENTIFIER: RN105031082; LOCATION: Keene, Johnson County, Texas; TYPE OF FACILITY: single-family home construction site; RULE VIOLATED: 30 Texas Administrative Code (TAC) §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: $2,100; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Bayer Materials Science LLC; DOCKET NUMBER: 2007-0400-AIR-E; IDENTIFIER: RN100209931; LOCATION: Baytown, Chambers County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §§115.352(4), 116.115(c), and 122.143(4), Air Permit Number O-02101, Special Terms and Conditions Number 11, Air Permit Number 1849A, Special Condition ("SC") Number 4E, Air Permit Number 2005, SC Number 3C, Air Permit Number 2033, SC Number 9E, Air Permit Number 26246, SC Number 9E, Air Permit Number 29481, SC Number 7E, 40 CFR §60.167(a)(1), and Texas Health & Safety Code (THSC), §382.085(b), by failing to seal open-ended lines in volatile organic compound (VOC) service; 30 TAC §101.20(2), 40 CFR §63.113(a)(2), and THSC, §382.085(b), by failing to reduce emissions of total organic hazardous air pollutants by 98 weight-percent or to a total concentration of 20 parts per million volume; and 30 TAC §101.20(2), 40 CFR §63.114(d)(1) and §63.152(f)(1), and THSC, §382.085(b), by failing to collect and record data from flow indicator on the hydrogen chloride incinerator; PENALTY: $38,233; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Jim Gaylan Beyer dba Beyer Dairy 1; DOCKET NUMBER: 2007-0578-AGR-E; IDENTIFIER: RN101513588; LOCATION: Erath County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.42(s), by failing to develop and operate under a comprehensive nutrient management plan (CNMP) certified by the Texas State Soil and Water Conservation Board (TSSWCB);

PENALTY: $2,160; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of De Leon; DOCKET NUMBER: 2007-0359-MWD-E; IDENTIFIER: RN101920569; LOCATION: De Leon, Comanche County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010078001, Effluent Limitations and Monitoring Requirements Numbers 1, 3, and 6, and the Code, §26.121(a), by failing to comply with permitted effluent limitations; 30 TAC §305.125(17) and TPDES Permit Number WQ0010078001, Sludge Provisions, Reporting Requirements, by failing to submit the discharge monitoring report (DMR) annual sludge disposal report; and 30 TAC §305.125(1) and TPDES Permit Number WQ0010078001, Monitoring and Reporting Requirements, Section 1, by failing to submit the effluent DMR parameter data; PENALTY: $9,945; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(5) COMPANY: City of Fort Worth; DOCKET NUMBER: 2007-0387-AIR-E; IDENTIFIER: RN100942259; LOCATION: Arlington, Tarrant County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §122.146(2), Federal Operating Permit (FOP) Number O-01704, General Terms and Conditions, and THSC, §382.085(b), by failing to timely submit an annual compliance certification; PENALTY: $2,200; ENFORCEMENT COORDINATOR: Lindsey Jones, (512) 239-4930; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: John Gardner; DOCKET NUMBER: 2007-0511-SLG-E; IDENTIFIER: RN103150165; LOCATION: Poolville, Parker County, Texas; TYPE OF FACILITY: sludge transporter; RULE VIOLATED: 30 TAC §312.143, by failing to dispose of waste at an authorized facility; 30 TAC §312.145, by failing to accurately list the type of waste transported on the trip ticket; and 30 TAC §312.142(f)(3), by failing to amend the registration prior to transporting wastewater treatment plant sludge; PENALTY: $3,060; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Gavin Steel Fabricating Inc.; DOCKET NUMBER: 2007-0842-WQ-E; IDENTIFIER: RN100846542; LOCATION: Helotes, Bexar County, Texas; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: Georgetown Independent School District; DOCKET NUMBER: 2007-0282-EAQ-E; IDENTIFIER: RN105116149; LOCATION: Georgetown, Williamson County, Texas; TYPE OF FACILITY: school bus transportation terminal; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan; PENALTY: $24,000; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(9) COMPANY: City of Grandview; DOCKET NUMBER: 2007-0344-MWD-E; IDENTIFIER: RN101918753; LOCATION: Johnson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(4), TPDES Permit Number 10180001, Permit Conditions 2.g., and the Code, §26.121(a), by failing to prevent an unauthorized discharge; and 30 TAC §305.65 and TPDES Permit Number 10180001, Permit Conditions 4(c), by failing to submit the permit renewal application; PENALTY: $5,700; ENFORCEMENT COORDINATOR: Heather Brister, (512) 239-1203; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Houston Marine Services, Inc.; DOCKET NUMBER: 2007-0145-AIR-E; IDENTIFIER: RN102074739; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: fuel terminal; RULE VIOLATED: 30 TAC §117.479(e) and §117.534(2)(B)(i) and THSC, §382.085(b), by failing to conduct and submit a stack test; 30 TAC §116.115(c), Permit Number 21098, SC 7, and THSC, §382.085(b), by failing to comply with Boiler Number 2's maximum firing rate of nine billion British Thermal Units per calendar year; 30 TAC §§106.183(5), 116.115(b)(2)(E), 116.115(c), and 117.479(g), Permit Number 21098, SC 11, and THSC, §382.085(b), by failing to maintain fuel usage records; 30 TAC §116.115(c), Permit Number 21098, SC 1, and THSC, §382.085(b), by failing to control emissions from Tank 25-2 for VOCs and from boiler number 2 for sulfur dioxide and carbon monoxide; 30 TAC §117.479(e) and §117.534(2)(B)(i) and THSC, §382.085(b), by failing to conduct and submit a stack test for boiler number two; 30 TAC §116.116(a)(1) and THSC, §382.085(b), by failing to accurately represent, in Permit Number 21098, annual throughput rates; and 30 TAC §115.247(2) and THSC, §382.085(b), by failing to submit the annual report of monthly gasoline throughput; PENALTY: $17,812; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: J.B. Grand Canyon Dairy, L.P.; DOCKET NUMBER: 2007-0588-AGR-E; IDENTIFIER: RN100794155; LOCATION: Erath County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.42(s), by failing to develop and operate under a CNMP certified by the TSSWCB; PENALTY: $2,280; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: John Morgan Howle, Jr. and Allene Howle dba JM Howle Jr. Dairy; DOCKET NUMBER: 2007-0536-AGR-E; IDENTIFIER: RN101528586; LOCATION: Erath County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.42(s), by failing to develop and operate under a CNMP certified by the TSSWCB; PENALTY: $3,030; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: City of Kennard; DOCKET NUMBER: 2007-0510-MWD-E; IDENTIFIER: RN102078169; LOCATION: Houston County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11474001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; and 30 TAC §305.125(17) and TPDES Permit Number 11474001, Monitoring and Reporting Requirements Number 1, by failing to submit the DMR parameter data; PENALTY: $4,200; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: Knapp Chevrolet, Inc.; DOCKET NUMBER: 2007-0843-PST-E; IDENTIFIER: RN100546597; LOCATION: Harris County, Texas; TYPE OF FACILITY: car dealership; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to provide release detection; 30 TAC §334.50(d)(1)(B), by failing to implement inventory control methods; and 30 TAC §334.8(c)(5)(A)(i), by failing to

possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: $4,375; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Steven Mims; DOCKET NUMBER: 2007-0844-WOC-E; IDENTIFIER: RN103471181; LOCATION: Long Branch, Panola County, Texas; TYPE OF FACILITY: public water supply 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: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(16) COMPANY: Ahmad Fayyaz dba Mr. Carshine; DOCKET NUMBER: 2007-0847-PST-E; IDENTIFIER: RN102784519; LOCATION: Dallas County, Texas; TYPE OF FACILITY: car wash with gasoline sales; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to provide release detection; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: NC-Nortex Cattle Company, LLC; DOCKET NUMBER: 2007-0444-AGR-E; IDENTIFIER: RN104804794; LOCATION: Wilbarger County, Texas; TYPE OF FACILITY: cattle feeding operation; RULE VIOLATED: the Code, §26.121(a), by failing to prevent the unauthorized discharge of agricultural waste; and 30 TAC §321.33(c), by failing to obtain authorization to operate a confined animal feeding operation under a water quality general permit or individual permit; PENALTY: $6,300; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(18) COMPANY: North Alamo Water Supply Corporation; DOCKET NUMBER: 2007-0486-MWD-E; IDENTIFIER: RN102340056; LOCATION: Monte Alto, Hidalgo County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013747004, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limitations; PENALTY: $5,700; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(19) COMPANY: Petro Stopping Centers, L.P. dba Petro Stopping Center 4; DOCKET NUMBER: 2007-0025-MLM-E; IDENTIFIER: RN102424884; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: truck stop with retail sales of gasoline and a truck service center; RULE VIOLATED: 30 TAC §334.10(b), by failing to have required underground storage tank records readily accessible and available; 30 TAC §334.45(c)(3)(A), by failing to securely anchor each UL-listed emergency shutoff valve at the base of each aboveground dispensing unit; 30 TAC §115.246(1) and (5) and THSC, §382.085(b), by failing to maintain a copy of the California Air Resource Board Executive Order for Stage II Vapor Recovery System and maintain a record of the results of Stage II testing; 30 TAC §115.222(3) and §115.242(4) and THSC, §382.085(b), by failing to ensure no avoidable gasoline leaks, as detected by sight, sound, or smell, exist anywhere in the liquid transfer or vapor balance system; 30 TAC §335.4(3), by failing to prevent the disposal of municipal hazardous waste in such a manner as to cause the endangerment of public health and welfare; 30 TAC §334.72, by failing to report a suspected release; 30 TAC §334.74, by failing to investigate a suspected release of regulated substances; and 30 TAC §324.15 and §327.5(c), by failing to submit written information, such as a letter, describing details of the spill and supporting the adequacy of the response action to the appropriate TCEQ regional manager; PENALTY: $41,242; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(20) COMPANY: reddy&family inc. dba Turbo Gas & Kwick Food Mart Location 23; DOCKET NUMBER: 2007-0841-PST-E; IDENTIFIER: RN102344991; LOCATION: Plainview, Hale County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to provide release detection; and 30 TAC §334.50(d)(1)(B), by failing to implement inventory control methods; PENALTY: $3,500; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(21) COMPANY: Nazir N. Chandani dba River Run Texaco; DOCKET NUMBER: 2007-0854-PST-E; IDENTIFIER: RN101560134; LOCATION: Rio Vista, Johnson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to provide release detection; and 30 TAC §334.50(d)(1)(B), by failing to implement inventory control methods; PENALTY: $3,500; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Scientific Drilling International Inc. dba Scientific Drilling International Permian Basin; DOCKET NUMBER: 2007-0856-WQ-E; IDENTIFIER: RN105179980; LOCATION: Midland, Midland County, Texas; TYPE OF FACILITY: oil and gas drilling; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(23) COMPANY: Sharnah Corporation dba Sadlers Food Mart; DOCKET NUMBER: 2007-0845-PST-E; IDENTIFIER: RN101543015; LOCATION: Garland, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to provide release detection; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Larry Skero; DOCKET NUMBER: 2007-0450-LII-E; IDENTIFIER: RN103268900; LOCATION: Kingsland, Llano County, Texas; TYPE OF FACILITY: landscape irrigation business; RULE VIOLATED: 30 TAC §30.5(b) and §344.58(b), Texas Occupations Code, §1903.251, and the Code, §37.003, by failing to refrain from using or attempting to use the license of someone else who is a licensed irrigator or licensed installer and failure to refrain from advertising or representing themselves to the public as a holder of a license or registration unless they possess a current license or registration; PENALTY: $262; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(25) COMPANY: Southeast Kaufman Water Supply Corporation; DOCKET NUMBER: 2007-0146-PWS-E; IDENTIFIER: RN101235463; LOCATION: Kaufman, Kaufman County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(f)(5) and THSC, §341.0315(c), by failing to provide a minimum purchase production capacity of two gallons per minute per connection; 30 TAC §290.42(l), by failing to compile and maintain an up-to-date plant operations manual for operator review and reference; 30 TAC §290.121(a), by failing to compile and maintain an up-to-date chemical and microbiological monitoring plan; and 30 TAC

§290.46(h), by failing to maintain a supply of calcium hypochlorite disinfectant; PENALTY: $1,045; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Dharani Amirali dba Star Food Mart; DOCKET NUMBER: 2007-0846-PST-E; IDENTIFIER: RN101743995; LOCATION: Rosenberg, Fort Bend County, Texas; 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: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: Texas Petrochemicals LP; DOCKET NUMBER: 2007-0488-AIR-E; IDENTIFIER: RN104964267; LOCATION: Port Neches, Jefferson County, Texas; TYPE OF FACILITY: industrial organic chemicals; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), FOP Number 1327, General Terms and Conditions and Special Condition 15, Air Permit Number 20485, Special Condition 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892 (409) 898-3838.

(28) COMPANY: The JHM & KPM Company, LLC dba D & D Construction Materials Company; DOCKET NUMBER: 2007-0280-MSW-E; IDENTIFIER: RN105067276; LOCATION: Azle, Tarrant County, Texas; TYPE OF FACILITY: sand mining operation; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $2,040; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2007-0604-AIR-E; IDENTIFIER: RN100219310; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.615(2), Standard Permit Number 50232, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §116.115(c), Air Permit Number 2501A, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $36,150; Supplemental Environmental Project (SEP) offset amount of $18,075 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Zeam, Incorporated dba Shell Food Mart; DOCKET NUMBER: 2007-0855-PST-E; IDENTIFIER: RN102425808; LOCATION: Mansfield, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(d)(1)(B), by failing to implement inventory control methods; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200702520
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 18, 2007

♦ ♦ ♦

Notice of Water Quality Applications

The following notices were issued during the period of June 13, 2007 through June 18, 2007.

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.

WQ0000542000; Rhodia Inc., which operates an inorganic chemicals plant which produces sulfuric acid and operates a hazardous waste incinerator, has applied for a major amendment to TPDES Permit No. WQ0000542000 to authorize an increase in the daily average flow from 1,400,000 gallons per day to 1,440,000 gallons per day and an increase in the daily maximum flow from 2,400,000 gallons per day to 3,000,000 gallons per day at Outfall 001; the addition of tiered permit limits at Outfall 001; addition of sulfur dioxide (SO2) scrubber blowdown via Outfall 001; and reduction of the monitoring frequency for various parameters from once per month to twice per year at Outfall 001. The current permit authorizes the discharge of treated process wastewater, treated incinerator wastewater, utility wastewater, and contaminated storm water runoff at a daily average flow not to exceed 1,400,000 gallons per day via Outfall 001. The facility is located at 8615 Manchester Street, approximately one-half mile west of the intersection of Manchester Street and Interstate Loop 610, in the City of Houston, Harris County, Texas.

PERMIT NO. WQ0001402000; Wyman-Gordon Forgings LP, which operates the Wyman-Gordon Forging Plant, an extruded and forged metal products manufacturing facility, has applied for a renewal of TPDES Permit No. WQ0001402000, which authorizes the discharge of treated domestic wastewater, cooling tower blowdown, and storm water on an intermittent and flow variable basis via Outfall 001; and process wastewater, cooling water, boiler blowdown, and treated domestic wastewater at a daily average flow not to exceed 225,000 gallons per day, and daily maximum flow not to exceed 550,000 gallons per day via Outfall 002. The facility is located at 10825 Telge Road, on the southwest corner of the intersection of U.S. Highway 290 and Telge Road, south of the Town of Cypress, Harris County, Texas.

WQ0001793000; McWane, Inc., which operates a grey and ductile iron foundry, has applied for a major amendment to TPDES Permit No. WQ0001793000 to recalculate technology-based and final effluent limitations at Outfall 001. The current permit authorizes the discharge of treated process wastewater at a daily average flow not to exceed 720,000 gallons per day via Outfall 001, treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day via Outfall 002, and storm water runoff on an intermittent and flow variable basis via Outfalls 003 and 004. The facility is located north of the intersection of and between U.S. Highway 69 and Jim Hogg Highway (old Lindale Highway) in the community of Swan, Smith County, Texas.

PERMIT NO. WQ0002382000; Air Products, L.P., which operates a manufacturing facility of organic and inorganic chemicals, has applied for a renewal of TPDES Permit No. WQ0002382000, which authorizes the discharge of utility wastewater and storm water on an intermittent and flow variable basis via Outfalls 001 and 002. The facility is located 1423 State Highway 225, on the northeast corner of the intersection of Red Bluff Road with State Highway 225 and west of Davison Road, in the City of Pasadena, Harris County, Texas.

PERMIT NO. WQ0003395000; Jim Broumley and Keith Broumley, have applied for a major amendment of, and conversion to an individual permit, Wastewater Registration No. WQ0003395000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to expand an existing dairy facility at a maximum capacity of

1,499 total head of which 1,100 head are milking cows. The major amendment also requests a decrease in Land Management Unit (LMU) from 434 acres to 229.5 acres. The facility is located on the west side of County Road 240, approximately 1 mile south of the intersection of County Road 240 and State Highway 6, east of Hico in Hamilton County, Texas.

WQ0000458000; Rohm and Haas Texas Incorporated, which operates the Deer Park Plant which is a chemical manufacturing plant, has applied for a major amendment to TPDES Permit No. WQ0000458000 to authorize an increase in the discharge of treated wastewater from a daily average flow not to exceed 7,200,000 gallons per day to a daily average flow not to exceed 8,400,000 gallons per day via Outfall 001; remove the effluent limitations or reduce the monitoring frequencies for amenable cyanide, total copper, total nickel, and total zinc at Outfalls 001 and 007; reduce the biomonitoring frequencies; calculate water quality-based total copper effluent limitations at Outfalls 001, 007, and 009 using the approved water effect ratios and site specific standards authorized for Segment No. 1006 under Appendix E of 30 TAC Chapter 307, the Texas Surface Water Quality Standards, effective February 27, 2002 and to apply a 0.70 partition coefficient for copper; remove the effluent limitations for ammonia nitrogen at Outfall 003; remove the effluent limitations or reduce the monitoring frequencies for amenable cyanide, total nickel, and total zinc at Outfall 009; remove the requirement to record the duration of all discharges via Outfall 009; recognize the potential installation of a second clarifier and other improvements to the wastewater treatment system; add the authorization to discharge hydrostatic test water to Outfalls 002, 003, 004, 005 and 006; add the discharge of storm water from construction activity via (all) Outfalls 001, 002, 003, 004, 005, 006, 007 and 009; and develop discharge limitations based on additional and/or increased flows for Outfalls 001, 002, 003, 004, 005, 006, 007, 008, 009, and 010. The current permit authorizes the discharge of treated process wastewater, storm water, treated utility wastewater, sanitary wastewater, and untreated utility wastewater at a daily average flow not to exceed 7,200,000 gallons per day via Outfall 001; nonprocess area storm water runoff on an intermittent and flow variable basis via Outfalls 002 and 003; nonprocess area and tank farm storm water runoff on an intermittent and flow variable basis via Outfalls 004 and 006; nonprocess area and barge dock storm water runoff on an intermittent and flow variable basis via Outfall 005; treated process wastewater, storm water, treated utility wastewater, sanitary wastewater, and untreated utility wastewater at a daily average flow not to exceed 2,500,000 gallons per day via Outfall 007; a reporting Outfall 008 that limits the cumulative discharge loading of ammonia nitrogen from Outfalls 001, 007, and 009; treated process wastewater, storm water, treated utility wastewater, sanitary wastewater, and untreated utility wastewater on an intermittent and flow variable basis via the diffuser pump basin overflow Outfall 009; and a reporting Outfall 010 that limits the cumulative discharge loading from Outfalls 001 and 009. The facility is located north of State Highway 225 and west of State Highway 134 (Battleground Road), in the City of Deer Park, Harris County, Texas.

PROPOSED PERMIT NO. WQ0004819000; SNBL USA, Ltd, proposes to operate SNBL USA SRC, a facility that imports and raises primates, and has applied for a new permit, Proposed Permit No. WQ0004819000 to authorize disposal of process wastewater, utility wastewater and domestic wastewater from feed storage, laboratory, animal hospital, sleeping quarters, and wash down water containing animal wastes at a daily average flow not to exceed 35,000 gallons per day via evaporation from a 15.2 acre-feet pond with a surface area of 10.4 acres. This permit will not authorize a discharge of pollutants into water in the State. The facility treatment ponds and evaporation pond are located approximately 5,900 feet northwest of the intersection of Farm-to-Market Road 625 and County Road 137 in the City of Alice, Jim Wells County, Texas.

PERMIT NO. WQ0010022001; The City of Buffalo has applied for a renewal of TPDES Permit No. 10022-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 322,000 gallons per day. The facility is located at 613 John Bullock Boulevard, adjacent to and east of Marion Boulevard, approximately 3/4 mile north-northeast of the intersection of U.S. Highways 75 and 79 in Leon County, Texas.

PERMIT NO. WQ0010483002; City of Nederland has applied for a renewal of TPDES Permit No. 10483-002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,220,000 gallons per day. The facility is located immediately east of the intersection of Hardy Avenue and Avenue D, east of the main drainage canal in the City of Nederland in Jefferson County, Texas.

PERMIT NO. WQ0010550001; The City of Bellaire has applied for a renewal of TPDES Permit No. 10550-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,500,000 gallons per day. The facility is located at 4401 Edith Street, approximately 1 mile northeast from the intersection of Interstate Highway 610 and Post Oak Road in Harris County, Texas.

PERMIT NO. WQ0010495109; The City of Houston has applied for a major amendment to TCEQ Permit No. WQ0010495109 to authorize an increase in the 2-hour peak flow discharge of treated effluent from 29,166 gallons per minute (gpm) to 44,514 gpm and the removal of monitoring and reporting requirements for Total Cadmium. The permittee is also requesting an expansion of the seasonal ammonia limit to include the months September through May and a relaxation of the seasonal limit from 3 milligrams per liter to 4 milligram per liter. The facility is located on the south bank of Buffalo Bayou, approximately 1,200 feet south of the confluence of Turkey Creek with Buffalo Bayou, approximately 4,800 feet southwest of the intersection of Memorial Drive and Dairy Ashford Road South in the City of Houston in Harris County, Texas.

PERMIT NO. WQ0010693003; City of Jacksonville has applied for a renewal of TPDES Permit No. 10693-003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The facility is located along State Highway 204, approximately 1.6 miles southeast of the intersection of State Highway 204 and Loop 456 in Cherokee County, Texas.

PERMIT NO. WQ0010851001; Trinity Bay Conservation District has applied for a major amendment to TPDES Permit No. 10851-001 to authorize seasonal and less stringent effluent limitations for ammonia-nitrogen. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,980,000 gallons per day. The facility is located approximately 1.2 miles southeast of the intersection of State Highway 124 and Farm-to-Market Road 1406, approximately 0.7 mile east of State Highway 124 on Buccaneer Drive in the City of Winnie in Chambers County, Texas.

PERMIT NO. WQ0011573001; Town of Lakeside has applied for a renewal of Permit No. 11573-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day via surface irrigation of 16 acres of non-public access pasture land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located in the southwest portion of the Town of Lakeside and about 700 feet south of the intersection of Aquilla Drive and Crestidge Drive in Tarrant County, Texas.

PERMIT NO. WQ0012631001; Harris County Municipal Utility District No. 202 has applied for a renewal of TPDES Permit No. WQ0012631001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 725,000 gallons per day. The permittee requested the elimination of the 750,000 gallons per day phase authorized in the current permit. The plant site is located approximately 1300 feet west of Bammel-North Houston, between Bourgeois Road and Harris County Flood Control District ditch in Harris County, Texas.

PERMIT NO. WQ0012686001; Del Lago Estates Utility Company has applied for a renewal of TPDES Permit No. 12686-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located east of Walden Road approximately one mile north of State Highway 105 in Montgomery County, Texas.

PERMIT NO. WQ0013522001; Big Oaks Limited has applied for a renewal of TPDES Permit No. 13522-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located at 3300 Lansing Switch Road, approximately 1,500 feet southwest of the intersection of Maple Springs Road and Interstate Highway 20 in Harrison County, Texas.

PERMIT NO. WQ0013638001; Roman Forest Consolidated Municipal Utility District has applied for a renewal of TPDES Permit No. 13638-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 0.322 million gallons per day. The facility is located approximately 1.7 miles east of U.S. Highway 59 and 1.2 miles north of the intersection of U.S. Highway 59 and Farm-to-Market Road 1485 at 1602 Athens Street in the City of Roman Forest in Montgomery County, Texas.

PERMIT NO. WQ0013764001; Alliance HC III Limited Partnership, dba The Gardens Apartments, has applied for a renewal of TPDES Permit No. WQ0013764001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located at 1660 West T.C. Jester Boulevard, located approximately 1000 feet south of the intersection of West 18th Street and East T.C. Jester Boulevard on the west bank of White Oak Bayou in the City of Houston in Harris County, Texas.

PERMIT NO. WQ0014359001; Harris County Municipal Utility District No. 366 has applied for a renewal of TPDES Permit No. 14359-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located at 7300-A Chippewa Street, Houston, Texas, on the west side of North Houston Rosslyn Road, approximately 2,200 feet north of Breen Road and 1,500 feet west of the end of Chippewa Boulevard in Harris County, Texas.

PERMIT NO. WQ0014722001; YFZ Land, LLC has applied for a new permit, Proposed Permit No. WQ0014722001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day via surface irrigation of 125 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site will be located approximately six miles northeast of the intersection of U.S. Highway 277 and County Road 300 in Schleicher County, Texas.

PERMIT NO. WQ0014760001; Hill Country Utilities, LLC has applied for a new permit, Proposed Permit No. WQ0014760001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day via surface irrigation of eight acres of non-public access pasture land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located in the Cielo Rio Ranch Subdivision, adjacent to Cielo Rio Drive, adjacent to Texas Highway 16, approximately three miles west of the intersection of Texas Highway 16 and Farm-to-Market Road 1283 in Pipe Creek, Bandera County, Texas.

PERMIT NO. WQ0014778001; Farmersville Investors, LP has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014778001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility will be located approximately 0.5 mile southwest of the intersection of State Highway 78 and County Road 550 in Collin County, Texas.

PERMIT NO. WQ0014793001; Skymark Development Company, Inc. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014793001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility will be located approximately 2,000 feet east and 1,000 feet south of the intersection of Long Point Slough and Farm-to-Market Road 1093 in Fort Bend County, Texas.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

WQ0004396000; PERMIT NO. WQ0004396000; City of Dallas, which operates the City of Dallas Municipal Separate Storm Sewer System (MS4), has applied for a minor amendment of existing TPDES Permit No. WQ0004396000. The draft permit authorizes storm water point source discharges to surface water in the state from the City of Dallas Municipal Separate Storm Sewer System (MS4). The municipal separate storm sewer system (MS4) is located within the corporate boundary of the City of Dallas, in Dallas, Collin, Denton, Rockwall and Kaufman Counties, Texas. Discharge is via the MS4 to various ditches and tributaries that eventually reach the East Fork Trinity River, Lake Ray Hubbard, Elm Fork Trinity River Below Lewisville Lake, White Rock Lake, Joe Pool Lake, Lower West Fork Trinity River and the Upper Trinity River in Segment Nos. 0805, 0819, 0820, 0822, 0827, 0838, and 0841 of the Trinity River Basin. The unclassified receiving waters have high, intermediate, limited, or no significant aquatic life use for the various ditches and tributaries. The designated uses for Segment Nos. 0805 and 0827 are contact recreation and high aquatic life use; 0820, 0822, and 0838 are contact recreation, public water supply and high aquatic life use; and 0819 and 0841 are contact recreation and intermediate aquatic life use. No significant degradation of high quality receiving waters is anticipated. All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk within 30 days of the date this notice is mailed. Notice was mailed on June 14, 2007.

INFORMATION SECTION

To view the complete issued notices, view the notices 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.

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-200702555
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 20, 2007

♦ ♦ ♦

Notice of Water Rights Application

Notice issued June 14, 2007

APPLICATION NO. 12160; ETC Katy Pipeline, Ltd., 800 East Sonterra Boulevard, Suite No. 400, San Antonio, Texas 78258, Applicant, has applied for a Temporary Water Use Permit to divert and use not to exceed 50 acre-feet of water within a period of one year from the Trinity River, Trinity River Basin for industrial purposes in Leon and Houston Counties. The application was received on February 16, 2007, and additional information and fees were received on March 23, 2007 and April 13, 2007. The application was declared administratively complete and filed with the Office of the Chief Clerk on April 17, 2007. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk at the address provided in the information section below by July 5, 2007.

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-200702554
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 20, 2007

♦ ♦ ♦

Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on July 19, 2007, at 8:00 a.m. to receive public comment on the proposed Medicaid Standard Dollar Amount (SDA) payment rates for state-owned, teaching hospitals. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric 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 §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid payment rates. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlins by calling (512) 491-1174 by July 16, 2007, so appropriate arrangements can be made.

Proposal. The proposed Medicaid Standard Dollar Amount (SDA) payment rates for state-owned, teaching hospitals, which will be effective September 1, 2007, are as follows:

Facility	Proposed SDA
University of Texas Medical Branch	$5,170.44
MD Anderson	$6,887.64
University of Texas--Tyler	$4,217.57

Methodology and justification. The current Medicaid reimbursement methodology rules for inpatient hospital services at 1 TAC §355.8063 are in the process of being revised to reflect a partial rebasing for state-owned teaching hospitals effective September 1, 2007, and ending August 31, 2008. The proposed payment rates are based upon fiscal year 2003 cost data inflated to fiscal year 2005 using a cost-of-living index, and have been adjusted proportionately to available funds. The proposed rule amendment will be published in the July 6, 2007, issue of the *Texas Register.*

Briefing Package. A briefing package describing the proposed payment rates will be available on or after July 5, 2007. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Alisa Jacquet by telephone at (512) 491-1432; by facsimile at (512) 491-1998; by e-mail at alisa.jacquet@hhsc.state.tx.us; or by U.S. mail at HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200. Briefing packages also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Alisa Jacquet, HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by facsimile to Ms. Jacquet at (512) 491-1998; or by e-mail to alisa.jacquet@hhsc.state.tx.us. In addition, written comments may be

sent by express mail or hand delivered to Ms. Jacquet, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200702549
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: June 20, 2007

♦ ♦ ♦

Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on July 18, 2007, at 9:00 a.m. to receive public comment on proposed rate increases for the following community care programs and services operated by the Department of Aging and Disability Services (DADS): Consumer Directed Services Agency (CDSA); Community-Based Alternatives (CBA) Waiver Program and CBA Assisted Living/Residential Care (AL/RC); Community Living Assistance and Support Services (CLASS); Medically Dependent Children Program (MDCP); Residential Care (RC); Emergency Response Services (ERS); Home-Delivered Meals; Primary Home Care (PHC); Day Activity and Health Services (DAHS); Deaf-Blind Multiple Disabilities Waiver (DB-MD); and Community Care for Aged and Disabled Adult Foster Care (CCAD AFC). The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.105(g), which require public notice and hearings on proposed reimbursements. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes to increase the rates for certain services provided under the programs listed above. The proposed rates will be effective September 1, 2007, and were determined in accordance with the rate setting methodologies listed below under Methodology and Justification.

Methodology and Justification. The proposed rates were determined in accordance with the rate setting methodologies codified at 1 TAC Chapter 355, Subchapter A, §355.114, Consumer Directed Services Payment Option; Subchapter E, §355.503, Reimbursement Methodology for the CBA Waiver Program; Subchapter E, §355.505, Reimbursement Methodology for the CLASS Waiver Program; Subchapter E, §355.509, Reimbursement Methodology for RC; Subchapter E, §355.510, Reimbursement Methodology for ERS; Subchapter E, §355.511, Reimbursement Methodology for Home-Delivered Meals; Subchapter G, §355.5902, Reimbursement Methodology for PHC; Subchapter G, §355.6907, Reimbursement Methodology for DAHS; and Subchapter M, §355.9022, Medicaid Waiver Program for People with DB-MD.

For MDCP, the proposed rates were determined in accordance with the rate setting methodology codified in 1 TAC Chapter 355, Subchapter E, §355.507, as proposed to be amended. The proposed rule amendments, which will be published in the July 6, 2007, issue of the *Texas Register,* require that rates for MDCP services be determined based upon rates for other similar services.

Rates for the programs and services listed in this notice were subsequently adjusted in accordance with 1 TAC Chapter 355, Subchapter A, §355.101 (relating to Introduction) and §355.109 (relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs). These changes are being made in accordance with the 2008-09 General Appropriations Act (Article II, Special Provisions, Section 57, H.B. 1, 80th Legislature, Regular Session, 2007), which appropriated $86.2 million general revenue funds for the State Fiscal Year 2008-2009 biennium for rate increases for DADS' community care programs.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after June 29, 2007. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; 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, Health and Human Services Commission, 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.

TRD-200702550
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: June 20, 2007

♦ ♦ ♦

Notice of Public Hearing on Proposed Payment Rates

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on July 17, 2007, at 1:30 p.m. to receive public comment on proposed rate increases for providers of 24-Hour Residential Child Care (RCC) services. The hearing will be held in compliance with Texas Administrative Code (TAC) Title 1, §355.7103(a)(2), which requires public notice and hearings on proposed 24-Hour RCC reimbursements. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. The proposed rates for 24-Hour RCC services will be effective September 1, 2007. HHSC proposes to increase rates for these services as required by the 2008-09 General Appropriations Act (Article II, Department of Family and Protective Services, Rider 33, H.B. 1, 80th Legislature, Regular Session, 2007). Rider 33 required that out of funds appropriated under the Act for rate increases for foster care, HHSC ensure that foster families receive a rate increase of 4.3 percent above the current minimum rate paid to foster families for each level of service. The rider also required that the remaining funds be distributed proportionally across all other types of providers of foster care based on each provider type's ratio of costs as reported on the most recently audited cost report to existing payment rates.

Methodology and Justification. The proposed rates were determined in accordance with the rate setting methodologies codified at Texas Ad-

ministrative Code (TAC) Title 1, Chapter 355, §355.7103, as proposed to be amended. The proposed amendment, which will appear in the July 6, 2007 issue of the *Texas Register,* codifies the requirements of Rider 33 described above under "Proposal." These changes are being made in accordance with other provisions in the 2008-09 General Appropriations Act (Article II, Special Provisions, Section 57, H.B. 1, 80th Legislature, Regular Session, 2007), which appropriated $13.4 million general revenue funds for the State Fiscal Year 2008-2009 biennium for rate increases for foster care.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after June 29, 2007. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; 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, Health and Human Services Commission, 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.

TRD-200702551
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: June 20, 2007

♦ ♦ ♦

Department of State Health Services

Correction of Error

The Department of State Health Services (DSHS) adopted new 25 TAC §133.169, concerning Tables, in the June 15, 2007, issue of the *Texas Register* (32 TexReg 3587).

The text and graphics for §133.169 were not published due to an error by the agency, reflecting the section in the preamble as "adopted without changes to the proposed text." The preamble included comments concerning §133.169, as well as changes to the graphics as proposed. The rule text and graphics for the new section that should have been published are as follows.

§133.169. Tables.

(a) Table 1. Sound transmission limitations in hospitals.

Figure: 25 TAC §133.169(a)

(b) Table 2. Flame spread and smoke production limitations for interior finishes.

Figure: 25 TAC §133.169(b)

(c) Table 3. Ventilation requirements for hospitals and outpatient facilities.

Figure: 25 TAC §133.169(c)

(d) Table 4. Filter efficiencies for central ventilation and air conditioning systems.

Figure: 25 TAC §133.169(d)

(e) Table 5. Hot water use.

Figure: 25 TAC §133.169(e)

(f) Table 6. Station outlets for oxygen, vacuum, and medical air systems.

Figure: 25 TAC §133.169(f)

(g) Table 7. Nurses Calling Systems.

Figure: 25 TAC §133.169(g)

(h) Table 8. Multiple Bed Room Configurations.

Figure: 25 TAC §133.169(h)

Figure: 25 TAC §133.169(a)

TABLE 1
SOUND TRANSMISSION LIMITATIONS IN HOSPITALS

	Airborne Sound Transmission Class (STC) [A]	
	Partitions	**Floors**
New construction		
Patient room to patient room	45	40
Public space to patient room [B]	55	40
Service areas to patient room [C]	65	45
Patient room access corridor [D]	45	45
Existing construction		
Patient room to patient room	35	40
Public space to patient room [B]	40	40
Service areas to patient room [C]	40	40

[A] Sound transmission class (STC) shall be determined by tests in accordance with methods set forth in ASTM E90 and ASTM E4 13. Where partitions do not extend to the structure above, sound transmission through ceilings and composite STC performance must be considered.

[B] Public space includes corridors (except patient room access corridors), lobbies, dining rooms, recreation rooms, treatment rooms, and similar space.

[C] Service areas include kitchens, elevators, elevator machine rooms, laundries, garages, maintenance rooms, boiler and mechanical equipment rooms, and similar spaces of high noise. Mechanical equipment located on the same floor or above patient rooms, offices, nurses stations, and similar occupied space shall be effectively isolated from the floor.

[D] Patient room access corridors contain composite walls with door/windows and have direct access to patient rooms. Junctions and joints of walls and partitions shall be sealed to prevent sound leakage under, over, or through the separation. Outlets shall be insulated and separated. Openings around ducts, conduits and pipes shall be sealed to minimize sound transmission.

Types of wall construction and the associated STC ratings are given in Fire Resistance Design Manual available from Gypsum Association, 810 First Street NE, #510, Washington, DC 20002.

NOTE: The listed STC rating requirements are for a reasonable degree of privacy. Rooms requiring confidentiality, such as psychiatric examination rooms and rooms with extraordinary noise sources, may require additional sound insulation including acoustical doors and seals.

Figure: 25 TAC §133.169(b)

TABLE 2
FLAME SPREAD AND SMOKE PRODUCTION LIMITATIONS
FOR INTERIOR FINISHES

		Flame Spread Rating	Smoke Development Rating
Walls and Ceilings [1]	**Exit Access, Storage Rooms, and Areas of Unusual Fire Hazard**	**Class A**[2] **NFPA 255**	**450 or less NFPA 258** [3]
	All other Areas	**Class B**[2] **NFPA 255**	**450 or less NFPA 258** [3]
Floors[4]		**No requirements**	**No requirements**

[1] Textile materials having a napped, tufted, looped, woven, nonwoven, or similar surface shall not be applied to walls or ceilings unless such materials have a Class A rating and are installed in rooms or areas protected by an approved automatic sprinkler system. Cellular or foamed plastic materials shall not be used as interior wall and ceiling finishes.

[2] Products required to be tested in accordance with National Fire Protection Association 255, Standard Method of Test of Surface Burning Characteristics of Building Materials, 2000 edition, shall be Class A (flame spread 0-25) or Class B (flame spread 26-75).

[3] Smoke development rating, an average of flaming and nonflaming values as determined by National Fire Protection Association 258, Standard Research Test Method for Determining Smoke Generation of Solid Materials, 2001 Edition.

[4] See §133.162(d)(1)(D) of this title for requirements relative to carpeting in areas that may be subject to use by handicapped individuals. Such areas include offices and waiting spaces as well as corridors that might be used by handicapped employees, visitors, or staff.

Figure: 25 TAC §133.169(c)

TABLE 3
VENTILATION REQUIREMENTS FOR HOSPITALS AND OUTPATIENT FACILITIES [1]

Area Designation	Air movement relationship to adjacent areas [2,16]	Minimum air changes of outdoor air per hour [3]	Minimum total air changes per hour [4]	All air exhausted directly to outdoors [5]	Recirculated by means of room units [6]	Relative humidity [7] (%)	Design temperature [8] (degrees F)
SURGERY AND CRITICAL CARE							
Operating/Surgical, cystoscopic rooms [9,16]	Out	4	20	----	No	30-60	68-73 [17]
Airborne infection isolation surgical rooms	In	4	15	Yes	No	30-60	68-73
Isolation anteroom (surgery)	In/Out [20]	----	10	Yes	No	----	----
Delivery room [9]	Out	3	15	----	No	30-60	68-73
Recovery room [9]	----	2	6	----	No	30-60	70-75
Critical and intensive care	----	2	6	----	No	30-60	70-75
Treatment room [10]	----	----	6	----	----	----	75
Trauma room [10]	Out	3	15	----	No	30-60	70-75
Anesthesia gas storage	In	----	8	Yes	----	----	----
Endoscopy	Out	2	6	----	No	30-60	68-73
Bronchoscopy	In	2	12	Yes	No	30-60	68-73
Intermediate care	----	2	6 [18]	----	No	30-60	70-75
Newborn intensive care	----	2	6	----	No	30-60	72-78
Emergency suite waiting	In	2	12	Yes [19]	----	----	70-75
Triage	In	2	12	Yes [19]	----	----	70-75
Radiology waiting	In	2	12	Yes [19]	----	----	70-75
Procedure room	Out	4	20	----	No	30-60	70-75
Laser eye room	Out	4	20	----	No	30-60	70-75
X-ray (Surgical/Critical care, catheterization)	Out	3	15	----	No	30-60	70-75
NURSING							
Patient room	----	2	6 [18]	----	----	----	70-75
Toilet room	In	----	10	Yes	----	----	70-75
Newborn nursery suite	----	2	6	----	No	30-60	72-78
Protective environment room [11]	Out	2	12	----	No	----	70-75
Protective environment anteroom [11]	In/In [21]	----	10	----	No	----	----
Airborne infection isolation room [12]	In	2	12	Yes	No	----	70-75
Isolation alcove or anteroom [12]	In/Out [20]	----	10	Yes	No	----	----
Labor, delivery, recovery (LDR)	----	2	6 [18]	----	----	----	70-75
Labor, delivery, recovery, postpartum(LDRP)	----	2	6 [18]	----	----	----	70-75
Patient corridor	----	----	2	----	----	----	----

TABLE 3
VENTILATION REQUIREMENTS FOR HOSPITALS AND OUTPATIENT FACILITIES [1]
(Continued)

Area Designation	Air movement relationship to adjacent areas [2,16]	Minimum air changes of outdoor air per hour [3]	Minimum total air changes per hour [4]	All air exhausted directly to outdoors [5]	Recirculated by means of room units [6]	Relative humidity [7] (%)	Design temperature [8] (degrees F)
ANCILLARY							
Radiology [13] X-ray (diagnostic and treatment)	----	----	6	----	----	----	75
Darkroom	In	----	10	Yes	No	----	----
Fluoroscopy	In	2	6	----	----	----	75
Laboratory General [13]	----	2	6	----	----	----	75
Bacteriology	In	2	6	Yes	No	----	75
Biochemistry [13]	In	2	6	Yes	No	----	75
Cytology	In	2	6	Yes	No	----	75
Glass washing	In	----	10	Yes	----	----	75
Histology	In	2	6	Yes	No	----	75
Microbiology [13]	In	2	6	Yes	No	----	75
Nuclear medicine	In	2	6	Yes	No	----	75
Pathology	In	2	6	Yes	No	----	75
Serology	In	2	6	Yes	No	----	75
Sterilizing	In	----	10	Yes	No	----	75
Media transfer	Out	2	4	----	----	----	----
Autopsy room	In	----	12	Yes	No	----	----
Nonrefrigerated body-holding room	In	----	10	Yes	----	----	70
Pharmacy	Out	----	4	----	----	----	75
Preparation/anteroom	Out	2	6	----	No	----	75
IV hood room	Out	2	6	----	No	----	75
Chemotherapy room-fume hoods	In	2	6	Yes	No	----	75
DIAGNOSTIC AND TREATMENT							
Examination room	----	----	6	----	----	----	75
Medication room	Out	----	4	----	----	----	75
Treatment room	----	----	6	----	----	----	75
Physical therapy and hydrotherapy	In	----	6	----	----	----	75
Soiled workroom or holding	In	----	10	Yes	No	----	----
Clean workroom or holding	Out	----	4	----	----	----	----
STERILIZING AND SUPPLY							
EO sterilizer room [15]	In	----	10	Yes	No	30-60	75
Sterilizer equipment room [2]	In	----	10	Yes	No	----	----

TABLE 3
VENTILATION REQUIREMENTS FOR HOSPITALS AND OUTPATIENT FACILITIES [1]
(Continued)

Area Designation	Air movement relationship to adjacent areas [2,16]	Minimum air changes of outdoor air per hour [3]	Minimum total air changes per hour [4]	All air exhausted directly to outdoors [5]	Recirculated by means of room units [6]	Relative humidity [7] (%)	Design temperature [8] (degrees F)
STERILIZING AND SUPPLY (Continued)							
Central medical and surgical supply							
Soiled or decontamination room	In	----	6	Yes	No	----	68-73
Clean workroom	Out	----	4	----	No	30-60	75
Sterile storage	Out	----	4	----	----	70 Max	----
Equipment storage	----	----	2	----	----	----	----
SERVICE							
Food preparation center [14]	----	----	10	----	No	----	----
Ware washing	In	----	10	Yes	No	----	----
Dietary day storage	In	----	2	----	----	----	----
Laundry, general	----	----	10	Yes	----	----	----
Soiled linen (sorting and storage)	In	----	10	Yes	No	----	----
Clean linen storage	Out	----	2	----	----	----	----
Soiled linen and trash chute room	In	----	10	Yes	No	----	----
Bedpan room	In	----	10	Yes	----	----	----
Bathroom	In	----	10	Yes	----	----	75
Janitor's closet	In	----	10	Yes	No	----	----
ADMINISTRATIVE AND SUPPORT SERVICE							
Administrative and support service	----	----	2	----	----	30 Min	68-73

Notes applicable to Table 3:
"Ventilation Requirements for Hospitals and Outpatient Facilities"

[1] The ventilation rates in this table cover ventilation for comfort, as well as for asepsis and odor control in areas of acute care hospitals that directly affect patient care and are determined based on health care facilities being predominantly "No Smoking" facilities. Where smoking may be allowed, ventilation rates will need adjustment. Areas where specific ventilation rates are not given in the table shall be ventilated in accordance with American Society of Heating Refrigeration and Air-Conditioning Engineers (ASHRAE) Standard 62.1, 2004 edition, Ventilation for Acceptable Indoor Air Quality, and American Society of Heating Refrigeration and Air-Conditioning Engineers, Handbook of Applications, 2003 edition. Specialized patient care areas, including organ transplant units, burn units, specialty procedure rooms, etc. shall have additional ventilation provisions for air quality control as may be appropriate. Occupational Safety and Health Administration (OSHA) standards and/or National Institute for Occupational Safety and Health (NIOSH) criteria require special ventilation requirements or employee health and safety within health care facilities.

[2] Design of the ventilation system shall provide air movement which is generally from clean to less clean areas. If any form of variable air volume or load shedding system is used for energy conservation, it must not compromise the corridor-to-room pressure balancing relationships or the minimum air changes required by the table. Except where specifically permitted by exit corridor plenum provisions of NFPA 90A, 2002 edition, the volume of infiltration or exfiltration shall be the volume necessary to maintain a minimum of 0.01 inch water gauge.

[3] To satisfy exhaust needs, replacement air from the outside is necessary. Table 3 does not attempt to describe specific amounts of outside air to be supplied to individual spaces except for certain areas such as those listed. Distribution of the outside air, added to the system to balance required exhaust, shall be as required by good engineering practice. Minimum outside air quantities shall remain constant while the system is in operation. In variable volume systems, the minimum outside air setting on the air handling unit shall be calculated using the ASHRAE Standard 62.1, 2004 edition.

[4] Number of air changes may be reduced when the room is unoccupied if provisions are made to ensure that the number of air changes indicated is reestablished any time the space is being utilized. Adjustments shall include provisions so that the direction of air movement shall remain the same when the number of air changes is reduced. Areas not indicated as having continuous directional control may have ventilation systems shut down when space is unoccupied and ventilation is not otherwise needed, if the maximum infiltration or exfiltration permitted in Note 2 is not exceeded and if adjacent pressure balancing relationships are not compromised. Air quantity calculations must account for filter loading such that the indicated air change rates are provided up until the time of filter change-out. The minimum total air change requirements shall be based on the supply air quantity in positive pressure rooms and the exhaust air quantity in negative pressure rooms. Air change requirements indicated are minimum values. Higher values shall be used when required to maintain indicated room conditions (temperature and humidity, based on the cooling load of the space: lights, equipment, people, exterior walls and windows, etc.).

Notes applicable to Table 3:
"Ventilation Requirements for Hospitals and Outpatient Facilities"
(Continued)

[5] Air from areas with contamination and/or odor problems shall be exhausted to the outside and not recirculated to other areas. Note that individual circumstances may require special consideration for air exhaust to the outside, e.g. in intensive care units in which patients with pulmonary infection are treated, and rooms for burn patients.

[6] Recirculating room heating, ventilating, and air conditioning (HVAC) units refers to those local units that are used primarily for heating and cooling of air, and not disinfection of air. Because of cleaning difficulty and potential for buildup of contamination, recirculating room units shall not be used in areas marked "No." However, for airborne infection control, air may be recirculated within individual isolation rooms if filters with a maximum efficiency rating value of 17 or higher are used. The maximum efficiency rating value (MERV) is a standard of ASHRAE, Standard 52.2, 1999 edition. Isolation and intensive care unit rooms may be ventilated by reheat induction units in which only the primary air supplied from a central system passes through the reheat unit. Gravity-type heating or cooling units such as radiators or convectors shall not be used in operating rooms and other special care areas. Recirculating devices with 99.97% efficiency filters may have potential uses in existing facilities as interim, supplemental environmental controls to meet requirements for the control of airborne infectious agents. Limitations in design must be recognized. The design of either portable or fixed systems should prevent stagnation and short circuiting of airflow. The supply and exhaust locations should direct clean air to areas where health care workers are likely to work, across the infectious source, and then to the exhaust, so the health care worker is not in a position between the infectious source and the exhaust location. The design of such systems should also allow for easy access for scheduled preventive maintenance and cleaning.

[7] The ranges listed are the minimum and maximum limits where control is specifically needed. The maximum and minimum limits are not intended to be independent of a space's associated temperature. The relative humidity is expected to be at the lower end of the range when the temperature is at the higher end, and vice versa.

[8] Where temperature ranges are indicated, the systems shall be capable of maintaining the rooms at any point within the range. A single figure indicates a heating or cooling capacity of at least the indicated temperature. This is usually applicable when patients may be undressed and require a warmer environment. Additional heating may be required in these areas to maintain temperature range. Nothing in these rules shall be construed as precluding the use of temperatures lower than those noted when the patients' comfort and medical conditions make lower temperatures desirable. Unoccupied areas such as storage rooms shall have temperatures appropriate for the function intended.

[9] NIOSH Criteria Documents regarding Occupational Exposure to Waste Anesthetic Gases and Vapors, and Control of Occupational Exposure to Nitrous Oxide indicate a need for both local exhaust (scavenging) systems and general ventilation of the areas in which the respective gases are utilized.

Notes applicable to Table 3:
"Ventilation Requirements for Hospitals and Outpatient Facilities"
(Continued)

[10] The term trauma room as used here is the operating room space in the emergency department or other trauma reception area that is used for emergency surgery. The first aid room and/or "emergency room" used for initial treatment of accident victims may be ventilated as noted for the "treatment room." Treatment rooms used for bronchoscopy shall be treated as bronchoscopy rooms. Treatment rooms used for cryosurgery procedures with nitrous oxide shall contain provisions for exhausting waste gases.

[11] The protective environment airflow design specifications protect the patient from common environmental airborne infectious microbes (i.e., Aspergillus spores). These special ventilation areas shall be designed to provide directed airflow from the cleanest patient care area to less clean areas. These rooms shall be protected with filters with a MERV rating of 17 or higher in the supply airstream. These interrupting filters protect patient rooms from maintenance-derived release of environmental microbes from the ventilation system components. Recirculation 99.97% efficiency filters can be used to increase the equivalent room air exchanges. Constant volume airflow is required for consistent ventilation for the protected environment. If the facility determines that airborne infection isolation is necessary for protective environment patients, an anteroom shall be provided. Rooms with reversible airflow provisions for the purpose of switching between protective environment and airborne infection isolation functions are not acceptable.

[12] The infectious disease isolation room described here is to be used for isolating the airborne spread of infectious diseases, such as measles, varicella, or tuberculosis. The design of airborne infection isolation rooms should include the provision for normal patient care during periods not requiring isolation precautions. Supplemental recirculating devices may be used in the patient room, to increase the equivalent room air exchanges; however, such recirculating devices do not provide the outside air requirements. Air may be recirculated within individual isolation rooms if filters with a MERV rating of 17 or higher are used. Exhaust systems for infectious isolation rooms shall exhaust no other areas or rooms. Rooms with reversible airflow provisions for the purpose of switching between protective environment and AII functions are not acceptable.

[13] When required, appropriate hoods and exhaust devices for the removal of noxious gases or chemical vapors shall be provided. Laboratory hoods shall meet the following general standards.

1. Have an average face velocity of at least 75 feet per minute.
2. Be connected to an exhaust system to the outside which is separate from the building exhaust system.
3. Have an exhaust fan located at the discharge end of the system.
4. Have an exhaust duct system of noncombustible corrosion-resistant material as needed to meet the planned usage of the hood.

Notes applicable to Table 3:
"Ventilation Requirements for Hospitals and Outpatient Facilities"
(Continued)

Laboratory hoods shall meet the following special standards:

1. Fume hoods and their associated equipment in the air stream, intended for use with perchloric acid and other strong oxidants, shall be constructed of stainless steel or other material consistent with special exposures, and be provided with a water wash and drain system to permit periodic flushing of duct and hood. Electrical equipment intended for installation within the duct shall be designed and constructed to resist penetration by water. Lubricants and seals shall not contain organic materials. When perchloric acid or other strong oxidants are only transferred from one container to another, standard laboratory fume hoods and associated equipment may be used in lieu of stainless steel construction. Fume hood intended for use with radioactive isotopes shall be constructed of stainless steel or other material suitable for the particular exposure and shall comply with National Fire Protection Association 801, Facilities for Handling Radioactive Materials, 2003 edition (NFPA 801).

NOTE: RADIOACTIVE ISOTOPES USED FOR INJECTIONS, ETC. WITHOUT PROBABILITY OF AIRBORNE PARTICULATES OR GASES MAY BE PROCESSED IN A CLEAN WORKBENCH-TYPE HOOD WHERE ACCEPTABLE TO THE NUCLEAR REGULATORY COMMISSION.

2. In new installations and construction or major renovation work, each hood used to process infectious or radioactive materials shall have a minimum face velocity of 150 feet per minute with suitable static pressure operated dampers and alarms to alert staff of fan shutdown. Each hood shall have filters with an efficiency of 99.97% (based on the dioctyl-phtalate test method) in the exhaust stream, and be designed and equipped to permit the removal, disposal, and replacement of contaminated filters. Filters shall be as close to the hood as practical to minimize duct contamination. Hoods that process radioactive materials shall meet the requirements of the Nuclear Regulatory Agency.

[14] Food preparation centers shall have ventilation systems whose air supply mechanisms are interfaced appropriately with exhaust hood controls or relief vents so that exfiltration or infiltration to or from exit corridors does not compromise the exit corridor restrictions of NFPA 90A, 2002 edition, the pressure requirements of NFPA 96, 2001 edition, or the maximum defined in the table. The number of air changes may be reduced or varied to any extent required for odor control when the space is not in use.

[15] The space that houses ethylene oxide (EO) sterilizers shall be designed to:

1. provide a dedicated local exhaust system with adequate capture velocity of 200 feet per minute to allow for the most effective installation of an air handling system, i.e., exhaust over sterilizer door, atmospheric exhaust vent for safety valve, exhaust at sterilizer, drain and exhaust for the aerator, and multiple load station;
2. provide exhaust in EO source areas such as service/aeration areas;
3. ensure that general airflow is away from sterilizer operator(s);

Notes applicable to Table 3:
"Ventilation Requirements for Hospitals and Outpatient Facilities"
(Continued)

4. provide a dedicated exhaust duct system for EO. The exhaust outlet to the atmosphere should be at least 25 feet away from any air intake; and
5. meet OSHA requirements.

[16] Differential pressure shall be a minimum of 0.01 inch water gauge. If alarms are installed, allowances shall be made to prevent nuisance alarms of monitoring devices.

[17] Some surgeons may require room temperatures that are outside of the indicated range. All operating room design conditions shall be developed in consultation with surgeons, anesthesiologists, infection control and nursing staff.

[18] Total air changes per room for patient rooms, intermediate care, labor/delivery/recovery rooms, and labor/delivery/recovery/postpartum rooms may be reduced to four when supplemental heating and/or cooling systems (radiant heating and cooling, baseboard heating, etc.) are used.

[19] In a ventilation system that recirculates air, filters with a MERV rating of 17 or higher can be used in lieu of exhausting the air from these spaces to the outside. In this application, the return air shall be passed through the HEPA filters before it is introduced into any other space.

[20] Air movement shall be IN to the isolation anteroom from the adjacent corridor and OUT from the anteroom to the adjacent isolation room.

[21] Air movement shall be IN to the protective environment anteroom from the adjacent corridor and IN to the anteroom from the adjacent protective environment room.

Figure: 25 TAC §133.169(d)

TABLE 4
FILTER EFFICIENCIES FOR CENTRAL VENTILATION AND AIR CONDITIONING SYSTEMS

Area Designation	Number of Filter Beds	Filter Bed No. 1 (Percent, MERV*)	Filter Bed No. 2 (Percent, MERV*)
Orthopedic and organ transplant operating rooms	2	25, 7	99.97, 17
Protective environment rooms	2	25, 7	99.97, 17
IV preparation and chemo-hood rooms	2	25, 7	99.97, 17
General procedure operating rooms, delivery rooms, nurseries, critical care units, patient care areas and treatment, diagnostic and related areas	2	25, 7	90, 14
Laboratories and sterile storage	1	80, 13	----
Administrative, bulk storage, soiled holding areas, food preparation areas, and laundries	1	30, 7	----

* MERV – Minimum efficiency rating value (American Society of Heating Refrigeration and Air-Conditioning Engineers (ASHRAE) Standard 52.2, 1999 edition.

NOTES:

- Additional roughing or prefilters should be considered to reduce maintenance required for filters with efficiency higher than 75%.
- The filtration efficiency ratings are based on ASHRAE Standard 52.1, 1992 edition.

Figure: 25 TAC §133.169(e)

TABLE 5
HOT WATER USE

	Clinical	Dietary	Laundry
Gallons per hour per bed [1]	3	2	2
Temperature (F degrees)	105-120 [2]	140 [3]	160 [4]

[1] Quantities indicated for design demand of hot water are for general reference minimums and shall not substitute for accepted engineering design procedures using actual number and types of fixtures to be installed. Design will also be affected by temperatures of cold water used for mixing, length of run, and insulation relative to heat loss. As an example, total quantity of hot water needed will be less when temperature available at the outlet is very nearly that of the source tank, and cold water used for tempering is relatively warm.

[2] Hot water temperature at point of use for hand washing and bathing.

[3] Provisions shall be made to provide 180 degrees Fahrenheit rinse water at the ware washer (may be by separate booster) unless a chemical rinse is provided.

[4] Provisions shall be made to provide 160 degrees Fahrenheit hot water at the laundry equipment when needed. (This may be by steam jet or separate booster heater.) However, it is emphasized that this does not imply that all water used will be at this temperature. Water temperatures required for acceptable laundry results shall vary according to type of cycle, time of operation, and formula of soap and bleach as well as type and degree of soil. Lower temperatures may be adequate for most procedures in many facilities but the higher 160 degrees Fahrenheit should be available when needed for special conditions.

Figure: 25 TAC §133.169(f)

TABLE 6
STATION OUTLETS FOR OXYGEN, VACUUM, AND MEDICAL AIR SYSTEMS

Location	Station Outlets		
	Oxygen see notes 1, 4	**Vacuum** see notes 1, 4	**Medical Air** see notes 1, 2, 3, 4
Patient rooms (medical and surgical care)	1/bed	1/bed	---
Patient rooms (psychiatric and chemical dependency care)	---	---	---
Seclusion rooms	---	---	---
Isolation rooms – infectious and protective (medical and surgical)	1/bed	1/bed	---
Examination/treatment (medical, surgical care and postpartum)	1/room	1/room	---
Pediatric and adolescent patient rooms	1/bed	1/bed	1/bed
Pediatric nursery	1/bassinet	1/bassinet	1/bassinet
Critical care unit (general)	3/bed	3/bed	1/bed
Coronary critical care unit	3/bed	2/bed	1/bed
Pediatric critical care unit	3/bed	3/bed	1/bed
Isolation room for each type critical unit	3/bed	3/bed	1/bed
Preoperative preparation and holding	1/bed	1/bed	---
Operating room (general, cardio-vascular, neurological and orthopedic surgery)	2/room	3/room	1/room
Operating room (cystoscopic and endoscopic surgery)	1/room	3/room	---
Post-anesthetic care unit	1/bed	3/bed	1/bed
Phase II recovery (note 12)	1/bed	3/bed	---
Special procedure rooms	2/room	2/room	1/room
Special procedure recovery	1/bed	1/bed	---
Cardiac catheterization lab	2/room	2/room	2/room
Endoscopic procedure room	2/room	2/room	1/room
Endoscopy work room	---	1	1 (note 3)
Decontamination room (part of sterile processing)	---	1	1 (note 3)
Cesarean section delivery/delivery room (emergency)	2/room	3/room	1/room
Infant resuscitation station in each cesarean section, delivery, LDR, and LDRP room (see note 8)	1/bassinet	1/bassinet	1/bassinet
Labor room	1/room	1/room	1/room
Labor/delivery/recovery (LDR)	1/bed	1/bed	---
Labor/delivery/recovery/postpartum (LDRP) room (see note 11)	1/bed	1/bed	---
Newborn nursery (full-term) (see note 10)	1/4 bassinets	1/4 bassinets	1/4 bassinets
Continuing care nursery	1/bassinet	1/bassinet	1/bassinet
Neonatal critical care unit	3/bassinet	3/bassinet	3/bassinet
Room-in nursery program (postpartum and LDRP)	1/bassinet	1/bassinet	1/bassinet
Obstetrical recovery room	1/bed	3/bed	1/bed
Obstetrical Triage room	1/bed	1/bed	---
Antepartum patient rooms	1/bed	1/bed	---
Postpartum patient rooms	1/bed	1/bed	---

TABLE 6
STATION OUTLETS FOR OXYGEN, VACUUM, AND MEDICAL AIR SYSTEMS
(Continued)

Location	Station Outlets		
	Oxygen see notes 1, 4	**Vacuum** see notes 1, 4	**Medical Air** see notes 1, 2, 4
MRI	1/room	1/room	1/room
Anesthesia workroom	1 /workstation	---	1/workstation
Holding/observation area/room	1/bed	1/bed	---
Definitive emergency care holding/observation area/room	1/bed	1/bed	---
Definitive emergency care exam/treatment room	1/bed	1/bed	1/bed
Trauma/cardiac room	2/bed	3/bed	1/bed
Orthopedic and cast room	1/room	1/room	---
Initial emergency management	1/bed	1/bed	---
Triage area (definitive emergency care)	1/station	1/station	---
Decontamination room (definitive emergency care)	1/station	1/station	---
Respiratory therapy clean room	1	---	1
Skilled nursing patient rooms	1/bed	1/bed	---
Intermediate care patient rooms	2/bed	2/bed	1/bed
Universal care patient rooms	3/bed	3/bed	1/bed
Autopsy room	---	1/workstation	---
Laboratory (note 9)	(notes 4,5,7)	(notes 5,6)	(notes 4,5,7)

Notes:

1. Prohibited uses of medical gases include fueling torches, blowing down or drying any equipment such as lab equipment, endoscopy or other scopes, or any other purposes. Also prohibited is using the oxygen or medical air to raise, lower, or otherwise operate booms or other devices in operating rooms (ORs) or other areas.

2. Medical air sources shall be connected to the medical air distribution system only and shall be used only for air in the application of human respiration, and calibration of medical devices for respiratory application. The medical air piping distribution system shall support only the intended need for breathable air for such items as intermittent positive pressure breathing (IPPB) and long-term respiratory assistance needs, anesthesia machines, and so forth. The system shall not be used to provide engineering, maintenance, and equipment needs for general hospital support use. The life safety nature of the medical air system shall be protected by a system dedicated solely for its specific use.

3. Instrument air shall be used for purposes such as the powering of medical devices unrelated to human respiration (e.g., surgical tools, ceiling arms). Medical air and instrument air are distinct systems for mutually exclusive applications. Nitrogen shall be allowed for Decontamination and Endoscopy workroom uses if provided with reducing regulator. This shall be supplied from existing medical gas support nitrogen system and installed in accordance to NFPA 99, 2002 edition.

TABLE 6
STATION OUTLETS FOR OXYGEN, VACUUM, AND MEDICAL AIR SYSTEMS
(Continued)

4. Central supply systems for oxygen, medical air, nitrous oxide, carbon dioxide, nitrogen and all other medical gases shall not be piped to, or used for, any other purpose except patient care applications.

5. Primary NFPA reference documents regarding laboratories shall be as follows:
Laboratory in a building with inpatients - NFPA 99, 2002 edition.
Laboratory in a building with outpatients incapable of self-preservation - NFPA 99, 2002 edition.
Laboratory in a building with outpatients capable of self-preservation - NFPA 45, 2000 edition.

6. Any laboratory (such as for analysis, research, or teaching) in a hospital that is used for purposes other than direct support of patient therapy should preferably have its own self-supporting vacuum system, independent of the medical-surgical vacuum system. Where only one set of vacuum pumps is available for a combined medical-surgical vacuum system and an analysis, research, or teaching laboratory vacuum system, such laboratories shall be connected separately from the medical-surgical system directly to the receiver tank through its own isolation valve and fluid trap located at the receiver. Between the isolation valve and fluid trap, a scrubber shall be permitted to be installed. A small laboratory in patient care areas used in direct support of patient therapy should not be required to be connected directly to the receiver or have fluid traps, scrubbers, and so forth, separate from the rest of the medical-surgical system.

7. Laboratory gas piping systems should not be used to pipe gas for use by hospital patients. This applies to piping systems intended to supply gas to patients within a laboratory facility. Such a system should not be used to supply laboratory equipment other than that directly involved with the patient procedure.

8. When infant resuscitation takes place in a room such as cesarean section/delivery or LDRP, then the infant resuscitation services must be provided in that room in addition to the minimum service required for the mother.

9. Laboratory is a building, space, room, or group of rooms intended to serve activities involving procedures for investigation, diagnosis, or treatment in which flammable, combustible, or oxidizing materials are to be used.

10. Four bassinets may share one outlet that is accessible to each bassinet.

11. One outlet for mother and one for bassinet.

12. If Phase II recovery area is a separate area from the PACU, only one vacuum per bed or station shall be required.

Figure: 25 TAC §133.169(g)

TABLE 7
NURSES CALLING SYSTEM

LOCATION	NURSES REGULAR CALLING SYSTEM		EMERGENCY CALLING SYSTEM		STAFF EMERGENCY ASSISTANCE CALLING SYSTEM (Code Blue)	
	CALL	Annunciate	CALL [4]	Annunciate	CALL	Annunciate
Administration & Public Suite	-	-	-	-	-	-
Cart Cleaning & Sanitizing Unit	-	-	-	-	-	-
Central Sterile Supply Suite	-	-	-	-	-	-
Critical Care Unit - see specific unit	-	-	-	-	-	-
CCU	X	Note 1	X	Note 1	X [10]	Note 2, 3
CCCU	X	Note 1	X	Note 1	X [10]	Note 2, 3
PCCU	X	Note 1	X	Note 1	X [10]	Note 2, 3
Dietary Suite	-	-	-	-	-	-
Emergency Suite	-	Note 1	X	Note 1	-	Note 2, 3
Triage, Trauma	-	-	-	-	X	-
Exam, Treatment	X [6]	-	-	-	X	-
Holding and Observations Rooms/Area	X [6]	-	-	-	X [10]	-
Multiple Purpose Room	-	-	-	-	X	-
Patient Decontamination/Shower	-	-	-	-	X	-
Employees Suite	-	-	-	-	-	-
Engineering Suite & Equipment Areas	-	-	-	-	-	-
General Stores	-	-	-	-	-	-
Hospital-based Skilled Nursing Units - see Nursing Unit	-	-	-	-	-	-
Hyperbaric Suite	-	Note 1	X	Note 1	-	Note 2, 3
Holding Area	X [6]	-	-	-	-	-
Patient Dressing Room	-	-	X	-	-	-
Treatment	-	-	-	-	X	-
Imaging Suite	-	Note 1	X	Note 1	-	Note 2, 3
Holding, Prep, Recovery	X [6]	-	-	-	-	-
Patient Dressing Room	-	-	X	-	-	-
Imaging Procedure Room	-	-	-	-	X [5]	-
Intermediate Care Suite	-	Note 1	X	Note 1	-	Note 2, 3
Patient Room	X [6]	-	-	-	X [10]	-
Patient Bathroom	-	-	X	-	-	-
Laboratory Suite	-	-	-	-	-	-
Specimen Collection Room (remote location only)	-	-	X	Note 8 Note 1	-	-
Laundry Suite	-	-	-	-	-	-
Medical Records Suite	-	-	-	-	-	-
Mental Health and Chemical Dependency Nursing Suite [7]	-	-	-	-	-	-
Morgue	-	-	-	-	-	-
Nuclear Medicine Suite	-	Note 1	X	Note 1	-	Note 2, 3
Holding, Observation, Exam	X [6]	-	-	-	-	-
Patient Dressing Room, Dose Administration	-	-	X	-	-	-
Nuclear Medicine Procedure Room, Exam	-	-	-	-	X	-

TABLE 7
NURSES CALLING SYSTEM

LOCATION	NURSES REGULAR CALLING SYSTEM		EMERGENCY CALLING SYSTEM		STAFF EMERGENCY ASSISTANCE CALLING SYSTEM (Code Blue)	
	CALL	Annunciate	CALL [4]	Annunciate	CALL	Annunciate
Nursing Unit	-	Note 1	X	Note 1	-	Note 2, 3
Patient Room	X	-	-	-	-	-
Patient Bathroom	-	-	X	-	-	-
Central Bathing Facility Room	-	-	X	-	X	-
Exam, Treatment	-	-	-	-	X	-
Obstetrical Suite	-	Note 1	X	Note 1	-	Note 2,3
Obstetric Triage	-	-	-	-	X	-
Preoperative Rooms	X [6]	-	-	-	-	-
Labor, Recovery, LDR and LDRP Room	X [6]	-	-	-	X	-
Operating, Delivery, Infant Resuscitation Area/Room, Birthing Room, Full-Term Nursery	-	-	-	-	X	-
Continuing Care Nursery, NCCU	-	-	-	-	X [10]	Note 2, 3
Outpatient Suite	-	-	X	Note 1	-	Note 2, 3
Treatment, Diagnostic, and Observation Rooms, Secondary Recovery Lounge	-	-	-	-	X [10]	-
Stress Test Room/Lab	-	-	-	-	X	-
Pediatric and Adolescent Nursing Unit	-	Note 1	-	Note 1	-	Note 2, 3
Patient Suite with bed(s)	X [9]	-	X	-	X	-
Exam, Treatment	-	-	-	-	X	-
Pharmacy Suite	-	-	-	-	-	-
Radiotherapy Suite	-	Note 1	-	Note 1	-	Note 2, 3
Holding	X [6]	-	-	-	-	-
Patient Dressing Room	-	-	X	-	-	-
Exam, Treatment	-	-	-	-	X	-
Rehabilitation Nursing Unit - see Nursing Unit	-	-	-	-	-	-
Rehabilitation Therapy Suite	-	-	X	Note 1	-	Note 2, 3
Exam, Treatment	-	-	-	-	X	-
Hydrotherapy Tub	-	-	X	-	X	-
Patient Dressing Room	-	-	X	-	-	-
Renal Dialysis Suite (Acute & Chronic)	-	Note 1	X	Note 1	-	Note 2, 3
Treatment	X [6]	-	-	-	X	-
Respiratory Therapy Suite	-	-	X	Note 1	-	-
Special Procedure Suite	-	Note 1	X	Note 1	-	Note 2, 3
Preoperative, Holding Area	X [6]	-	-	-	-	-
Recovery	X [6]	-	-	-	X [10]	-
Special Procedure, Treatment Room, Bronchoscopy, Cardiac Catheterization Lab.	-	-	-	-	X	-
Surgical Suite	-	Note 1	X	Note 1	-	Note 2, 3
Preoperative	X [6]	-	-	-	-	-
PACU, Recovery, Holding Area	X [6]	-	-	-	X [10]	-
Operating, Special Procedure Room	-	-	-	-	X	-

TABLE 7
NURSES CALLING SYSTEM

LOCATION	NURSES REGULAR CALLING SYSTEM		EMERGENCY CALLING SYSTEM		STAFF EMERGENCY ASSISTANCE CALLING SYSTEM (Code Blue)	
	CALL	Annunciate	CALL [4]	Annunciate	CALL	Annunciate
Universal Care Suite	X	Note 1	X	Note 1	X	Note 2, 3
Exam, Treatment	-	-	-	-	X	Note 2, 3
Patient Toilet, Shower, Bath	-	-	X	Note 1	-	-
Patient Dressing Room	-	-	X	Note 1	-	-
Mobile Units - see specific requirements for type of suite provided	-	-	-	-	-	-

Notes to TDSHS Nurses Calling Systems Table:	
1	Nurse Station, Clean Work Room, Soiled Work Room, Medication Room, Charting Room, Clean Linen Storage, Nourishment Room, Equipment Storage
2	Nurse Station, Clean Work Room, Soiled Work Room, Medication, Room, Charting Room, Clean Linen Storage, Nourishment Room, Equipment Storage, Exam and Treatment Rooms
3	The system shall have voice communication capabilities between the point of alarm and the nurse station so that the type of emergency or help required may be specified.
4	All toilets, showers, baths and dressing rooms used by all patients
5	Device(s) for MRI to be in adjacent Control Room
6	In areas under constant visual surveillance, the nurses regular calling system may be limited to a bedside call button or station that activates a signal readily seen at the control station.
7	System is not required. When provided, refer to §133.163(q)(5)(A) for requirements.
8	Call to annunciate in the nearest unit or suite
9	Each patient bed shall be provided with a bedside call button. Consideration should be given to the age of the patient(s) so that voice communication is available as needed.
10	One code blue station may be shared between two beds, cribs, bassinets, or gurneys in a multiple type bed ward.

Figure: 25 TAC §133.169(h)

TABLE 8
MULTPLE BED ROOM CONFIGURATIONS

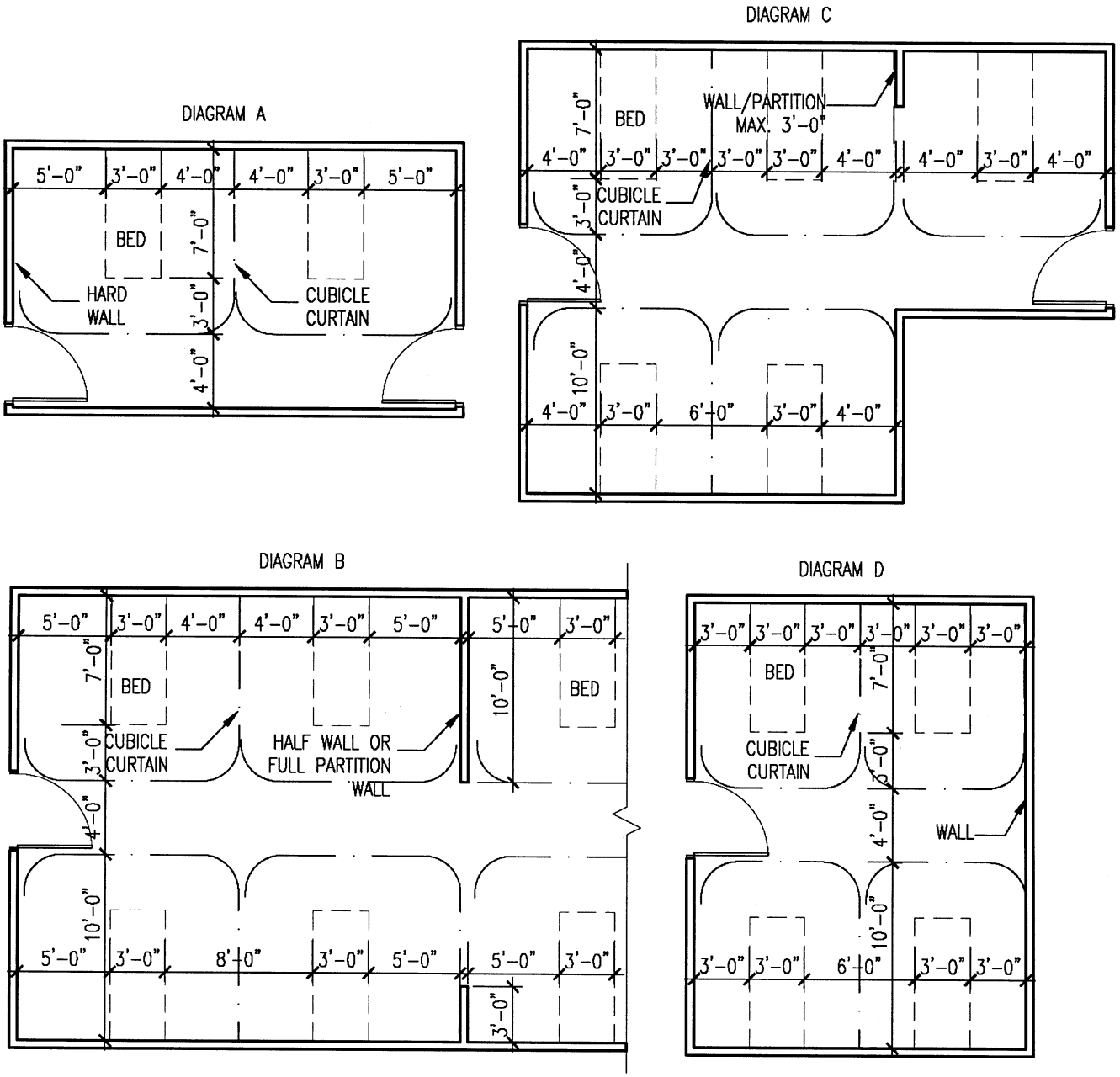


TABLE 8
MULTPLE BED ROOM CONFIGURATIONS
(Continued)

DIAGRAM E

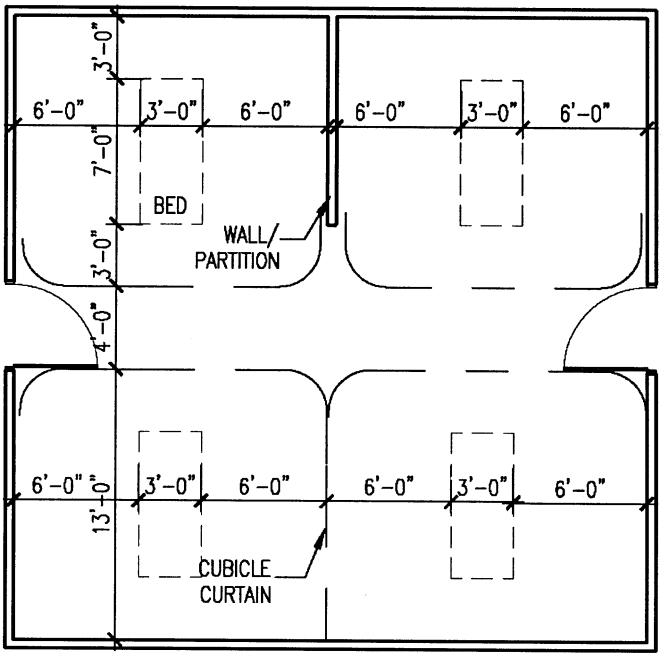


DIAGRAM G

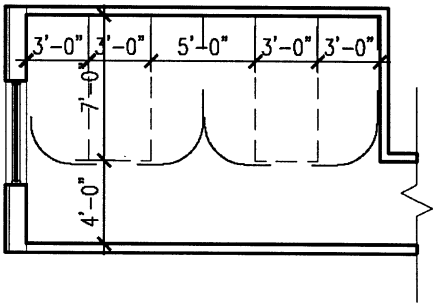


DIAGRAM H

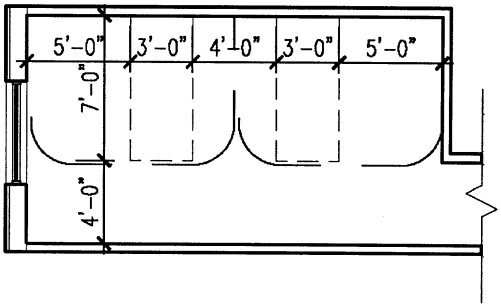


DIAGRAM F

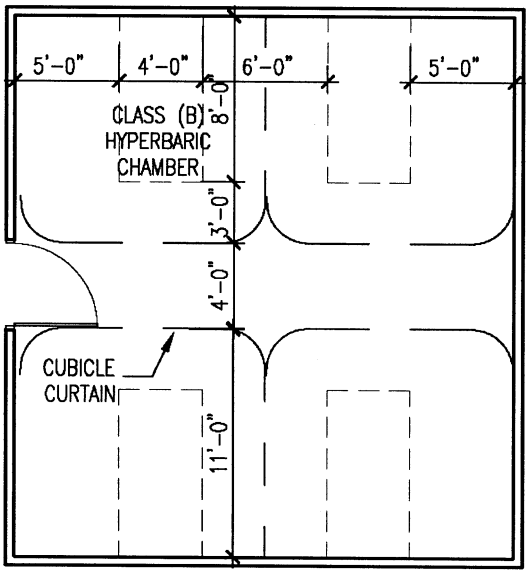


TABLE 8
MULTPLE BED ROOM CONFIGURATIONS
(Continued)

DIAGRAM I

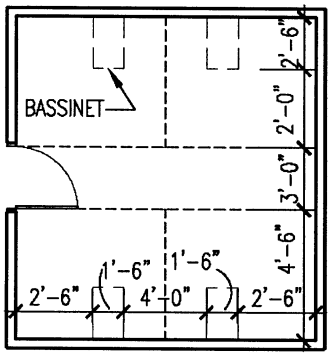


DIAGRAM K

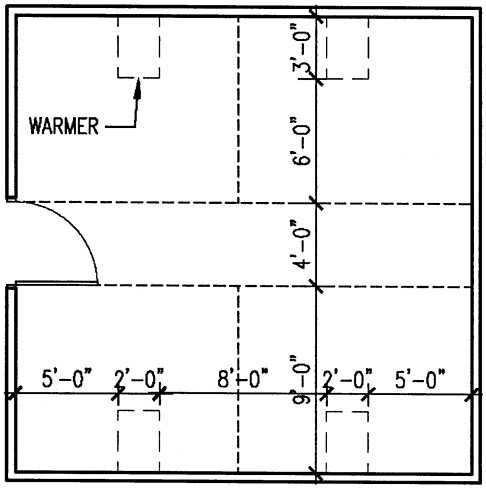


DIAGRAM J

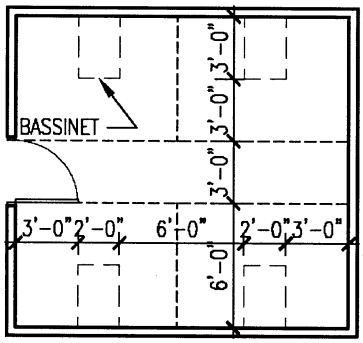


DIAGRAM L

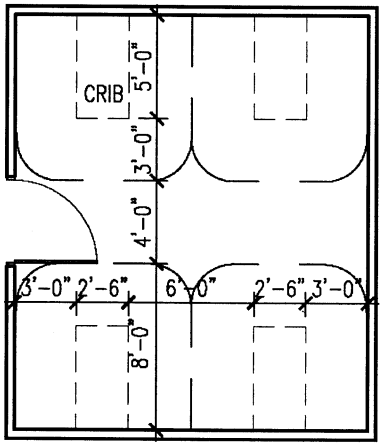


TABLE 8
MULTPLE BED ROOM CONFIGURATIONS
(Continued)

DIAGRAM M

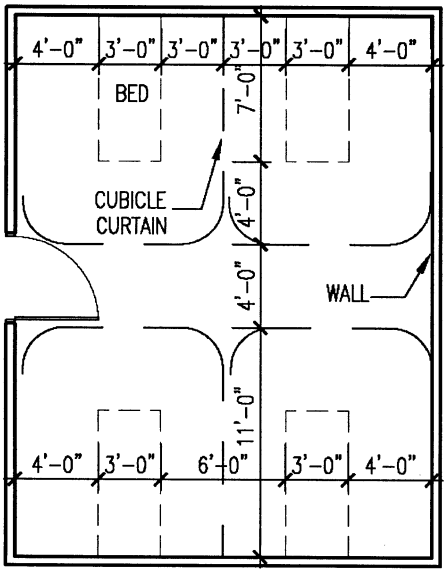


DIAGRAM O

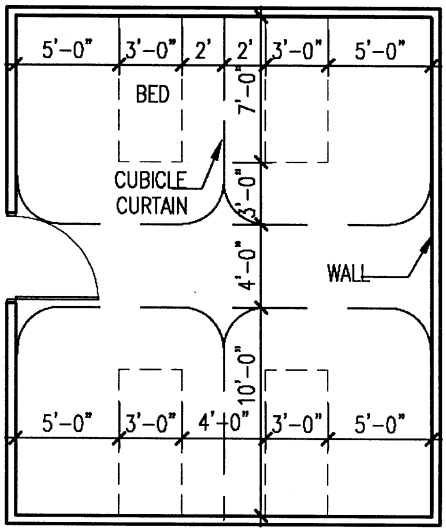


DIAGRAM N

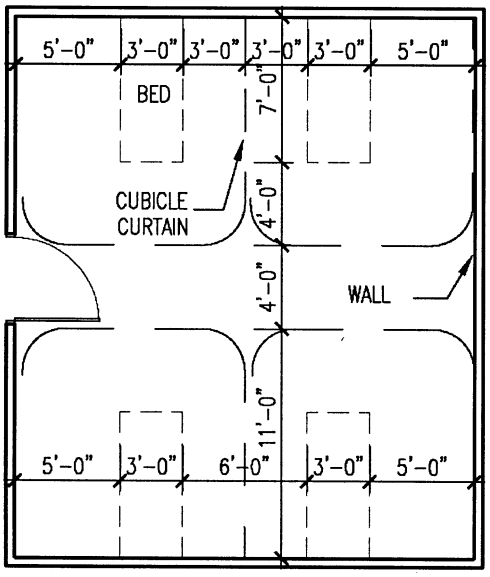
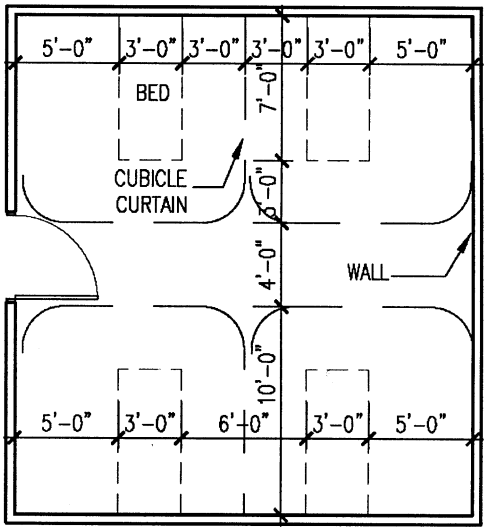


DIAGRAM P



TRD-200702529

♦ ♦ ♦

Notice of Public Hearing for Proposed Rules Concerning Inspection Fees for Retail Food Establishments

A public hearing will be held by the Department of State Health Services on July 13, 2007, at 8:30 a.m., in the main building, Room K-100 at the Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, to accept comments in regard to the proposed new rules concerning the inspection fees for retail food establishments. The proposed new rules for Title 25, Texas Administrative Code, §§229.470 - 229.474 will be published in the July 6, 2007, issue of the *Texas Register*.

Additional comments will be accepted by the Department of State Health Services at the public hearing held on July 13, 2007. Questions or additional information may be directed to Deborah Marlow, Food Establishments Group, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, phone (512) 834-6753 or e-mail deborah.marlow@dshs.state.tx.us.

TRD-200702547
Lisa Hernandez
Deputy General Counsel
Department of State Health Services
Filed: June 20, 2007

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Notice of Public Hearing

Low-Income Home Energy Assistance Program (LIHEAP) FFY 2008

For the federal fiscal year that begins October 1, 2007, the Texas Department of Housing and Community Affairs (TDHCA) anticipates receiving federal funds to continue the operation of certain programs that assist very low-income Texans with home energy. While in the process of deciding how to use Low-Income Home Energy Assistance Program (LIHEAP) funds, TDHCA now seeks opinions of groups affected by LIHEAP programs as well as opinions of other interested citizens.

As part of the public information, consultation, and public hearing requirements for LIHEAP, the Community Affairs Division of TDHCA will post the proposed plan on the TDHCA internet site and conduct a public hearing. Primarily, the hearing solicits comments on the proposed use and distribution of federal fiscal year (FFY) 2008 funds provided under LIHEAP. LIHEAP provides funding for the Weatherization Assistance Program (WAP) and utility assistance--known as "Comprehensive Energy Assistance Program (CEAP)".

The public hearing has been scheduled as follows:

Friday, July 13, 2007, 1:00 p.m.

Room #116, TDHCA Headquarters,

221 East 11th St.

Austin, Texas

A representative from TDHCA will explain the planning process and receive comments from interested citizens and affected groups regarding the proposed plan for LIHEAP subrecipients. A copy of the Draft LIHEAP Plan may be obtained after June 14, 2007, through TDHCA's web site, http://www.tdhca.state.tx.us/ea.htm or by contacting the Texas Department of Housing and Community Affairs, Community Affairs Division, Energy Assistance Section, P.O. Box 13941, Austin, Texas 78711-3941, or by phone at (512) 475-1435.

Anyone may submit comments on the draft plan in written form or oral testimony at the public hearing. TDHCA must receive written comments no later than 5:00 p.m., Friday, July 13, 2007. Comments concerning the draft plan may be submitted via the Internet to john.touchet@tdhca.state.tx.us or by fax (512) 475-3935 or through John Touchet at TDHCA using the postal service address provided above. If you want to ask questions regarding the public hearing process or any of the programs referenced above, please contact TDHCA, Community Affairs Division, Energy Assistance Section.

Individuals who require auxiliary aids or services for this meeting should contact Ms. Gina Esteves at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact John Touchet, (512) 475-1435 at least three days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-200702539
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 20, 2007

♦ ♦ ♦

Request for Proposals for Bond/Securities Disclosure Counsel

SUMMARY. The Texas Department of Housing and Community Affairs (TDHCA), through its Legal Services Division, is issuing a Request for Proposals (RFP) for outside Bond/Securities Disclosure Counsel. Bond/Securities Disclosure Counsel will provide legal services in connection with the issuance of TDHCA's bonds, notes, and other obligations of TDHCA to finance or refinance residential housing and multifamily housing developments and to refund prior bond issues.

DEADLINE FOR SUBMISSION. The deadline for submission in response to the Request for Proposals is 4:00 p.m., Central Daylight Saving Time, Friday, July 27, 2007. No proposal received after the deadline will be considered.

TDHCA reserves the right to accept or reject any (or all) proposals submitted. The information contained in this proposal request is intended to serve only as a general description of the services desired by TDHCA, and TDHCA intends to use responses as a basis for further negotiation of specific project details with offerors. This request does not commit TDHCA to pay for any costs incurred prior to the execution of a contract and is subject to availability of funds. Issuance of this request for proposals in no way obligates TDHCA to award a contract or to pay any costs incurred in the preparation of a response.

Law firms interested in submitting a proposal should contact Kevin Hamby, General Counsel, at (512) 475-3948, 221 East 11th Street, Austin, Texas 78701 or visit our website at www.tdhca.state.tx.us, for a complete copy of the RFP. Communication with any member of the board, the executive director, or TDHCA staff other than Mr. Hamby or his assistant, concerning any matter related to this request for proposals is grounds for immediate disqualification.

TRD-200702496

Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 18, 2007

♦ ♦ ♦

Request for Proposals for Outside Bond Counsel

SUMMARY. The Texas Department of Housing and Community Affairs (TDHCA), through its Legal Services Division, is issuing a Request for Proposals (RFP) for outside Bond Counsel. Bond Counsel will provide legal services in connection with the issuance of TDHCA's bonds, notes, and other obligations of TDHCA to finance or refinance residential housing and multifamily housing developments and to refund prior bond issues.

DEADLINE FOR SUBMISSION. The deadline for submission in response to the Request for Proposals is 4:00 p.m., Central Daylight Saving Time, Friday, July 27, 2007. No proposal received after the deadline will be considered.

TDHCA reserves the right to accept or reject any (or all) proposals submitted. The information contained in this proposal request is intended to serve only as a general description of the services desired by TDHCA, and TDHCA intends to use responses as a basis for further negotiation of specific project details with offerors. This request does not commit TDHCA to pay for any costs incurred prior to the execution of a contract and is subject to availability of funds. Issuance of this request for proposals in no way obligates TDHCA to award a contract or to pay any costs incurred in the preparation of a response.

Law firms interested in submitting a proposal should contact Kevin Hamby, General Counsel, at (512) 475-3948, 221 East 11th Street, Austin, Texas 78701 or visit our website at www.tdhca.state.tx.us, for a complete copy of the RFP. Communication with any member of the board, the executive director, or TDHCA staff other than Mr. Hamby or his assistant, concerning any matter related to this request for proposals is grounds for immediate disqualification.

TRD-200702497
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 18, 2007

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Company Licensing Application for admission to the State of Texas by RESPONSE WORLDWIDE INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Meriden, Connecticut.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200702548
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: June 20, 2007

♦ ♦ ♦

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

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code, §1501.312. A small employer health benefit plan issuer is defined by Insurance Code, §1501.002(16), as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to the Insurance Code, Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code, §1501.301(4), as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

USAble Life.

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal Division - Nick Hoelscher, 333 Guadalupe, Tower I, Room 920, Austin, Texas.

If you wish to comment on the application of USAble Life to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments and a determination that all requirements of law have been met, the Commissioner or his designee may take final action on the applicant's election to be a risk-assuming health benefit plan issuer.

TRD-200702519
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: June 18, 2007

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 775 "Spicy Hot 7's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 775 is "SPICY HOT 7'S". The play style for GAME 1 is "three in a line". The play style for GAME 2 is "match 3 of 9". The play style for GAME 3 is "key symbol match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 775 shall be $7.00 per ticket.

1.2 Definitions in Instant Game No. 775.

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: $7.00, $14.00, $21.00, $35.00, $70.00, $350, $700, $7,000, $77,000, 1, 2, 3, 4, 5, 6, 7, 8, 9, CACTUS SYMBOL, BRANDING IRON SYMBOL, BLAZING SUN SYMBOL, FIRE SYMBOL, HOT SAUCE SYMBOL, THERMOMETER SYMBOL, VOLCANO SYMBOL, FIREWORK SYMBOL, PALM TREE SYMBOL, FAN SYMBOL, ICE CUBE SYMBOL and 7 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. 775 - 1.2D

PLAY SYMBOL	CAPTION
$7.00	SEVENS
$14.00	FOURTEEN
$21.00	TWY ONE
$35.00	THY FIV
$70.00	SVTY
$350	THR FTY
$700	SVN HUN
$7,000	SVN THOU
$77,000	77 THOU
1	
2	
3	
4	
5	
6	
7	
8	
9	
CACTUS SYMBOL	CACTUS
BRANDING IRON SYMBOL	IRON
BLAZING SUN SYMBOL	SUN
FIRE SYMBOL	FIRE
HOT SAUCE SYMBOL	SAUCE
THERMOMETER SYMBOL	TMETER
VOLCANO SYMBOL	VOLCANO
FIREWORK SYMBOL	FIREWRK
PALM TREE SYMBOL	PALM
FAN SYMBOL	FAN
ICE CUBE SYMBOL	CUBE
“7” SYMBOL	SEVEN

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 775 - 1.2E

CODE	PRIZE
SVN	$7.00
FRN	$14.00
TWE	$21.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) 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: 0000000000000.

G. Low-Tier Prize - A prize of $7.00, $14.00 or $21.00.

H. Mid-Tier Prize - A prize of $35.00, $70.00 or $350.

I. High-Tier Prize - A prize of $700, $7,000 or $77,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (775), 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: 775-0000001-001.

L. Pack - A pack of "SPICY HOT 7'S" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 075 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 075 will be shown on the back of the pack.

M. 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.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SPICY HOT 7'S" Instant Game No. 775 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 "SPICY HOT 7'S" Instant Game is determined once the latex on the ticket is scratched off to expose 38 (thirty-eight) Play Symbols. For GAME 1, if a player reveals three "7" play symbols in any one row, column or diagonal, the player wins the PRIZE shown. For GAME 2, if a player matches 3 identical prize amounts play symbols, the player wins PRIZE shown. For GAME 3, if a player matches either WINNING SYMBOL play symbol to any of YOUR SYMBOLS play symbols, the player wins the PRIZE shown below that symbol. If a player reveals a "7" play symbol, the player wins PRIZE shown below that symbol instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 38 (thirty-eight) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 38 (thirty-eight) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 38 (thirty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 38 (thirty-eight) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. GAME 1: Players can win once in this play area.

C. GAME 1: No ticket will contain three (3) or more of a kind other than the "7" symbol.

D. GAME 1: The "7" symbol is the only symbol that can be used to make a winning line.

E. GAME 1: Winning tickets will contain only one (1) winning combination.

F. GAME 1: Tickets will not contain four (4) "7" symbols in all 4 corners.

G. GAME 2: Players can win once in this play area.

H. GAME 2: There will never be two (2) or more sets of three (3) matching PRIZE amounts on a single ticket.

I. GAME 2: There will never be four (4) or more matching PRIZE amounts on a single ticket.

J. GAME 3: Players can win up to ten (10) times in this play area.

K. GAME 3: No more than two (2) matching non-winning PRIZE symbols on a ticket.

L. GAME 3: No more than two (2) matching non-winning YOUR SYMBOLS on a ticket.

M. GAME 3: Non-winning prize symbols will not match a winning PRIZE symbol on a ticket.

N. GAME 3: The "7" symbol will never appear more than once on a ticket.

O. GAME 3: The "7" symbol will only appear on winning tickets.

P. GAME 3: The "7" symbol will never appear as one of the WINNING SYMBOLS.

Q. GAME 3: No duplicate WINNING SYMBOLS will appear on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "SPICY HOT 7'S" Instant Game prize of $7.00, $14.00, $21.00, $35.00, $70.00 or $350, 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, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $35.00, $70.00, or $350 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 "SPICY HOT 7'S" Instant Game prize of $700, $7,000 or $77,000, 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 "SPICY HOT 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, 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 "SPICY HOT 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 "SPICY HOT 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 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 4,080,000 tickets in the Instant Game No. 775. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 775 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$7	598,400	6.82
$14	353,600	11.54
$21	163,200	25.00
$35	36,550	111.63
$70	43,656	93.46
$350	5,032	810.81
$700	204	20,000.00
$7,000	10	408,000.00
$77,000	7	582,857.14

*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 3.40. 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. 775 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. 775, 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-200702544

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 20, 2007

♦ ♦ ♦

Instant Game Number 796 "Deluxe 7-11-21"

1.0 Name and Style of Game.

A. The name of Instant Game No. 796 is "DELUXE 7-11-21". The is "add up with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 796 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 796.

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, D SYMBOL, $2.00, $3.00, $4.00, $7.00, $11.00, $21.00, $50.00, $210, $210, $2,100 or $21,000.

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. 796 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
8	EGT
9	NIN
D SYMBOL	WINALL
$2.00	TWO$
$3.00	THREE$
$4.00	FOUR$
$7.00	SEVEN$
$11.00	ELEVEN
$21.00	TWY ONE
$50.00	FIFTY
$210	TWOHUND10
$2,100	21 HUND
$21,000	21 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 796 - 1.2E

CODE	PRIZE
TWO	$2.00
THR	$3.00
FOR	$4.00
SVN	$7.00
ELV	$11.00
TWE	$21.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) 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: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $3.00, $4.00, $7.00, $11.00 or $21.00.

H. Mid-Tier Prize - A prize of $50.00 or $210.

I. High-Tier Prize - A prize of $2,100 or $21,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (796), 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: 796-0000001-001.

L. Pack - A pack of "DELUXE 7-11-21" 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.

M. 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.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "DELUXE 7-11-21" Instant Game No. 796 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 "DELUXE 7-11-21" Instant Game is determined once the latex on the ticket is scratched off to expose 24 (twenty-four) Play Symbols. A player must add all 3 numbers for each GAME. If the total is 7, 11, or 21 within a GAME, the player wins the PRIZE shown for that GAME. If a player reveals a "D" play symbol, the player wins ALL 6 PRIZES instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 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. There will be a random distribution of all symbols on the ticket unless affected by other constraints, play action or prize structure.

B. Non-winning prize symbols will be unique.

C. Non-winning GAME totals will be unique.

D. A winning total is defined as the value of 7, 11 or 21.

E. On the ticket that wins with the "D" symbol, the "D" symbol will only appear on one of the positions. All other positions will be non-winning.

F. Non-winning prize symbols will not match winning prize symbols.

G. There will be at least one near win. A near win is a GAME whose total value is one point away from any of the winning total values

H. The $2,100 and $21,000 prize symbols will each appear on non-winning tickets unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "DELUXE 7-11-21" Instant Game prize of $2.00, $3.00, $4.00, $7.00, $11.00, $21.00, $50.00 or $210, 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, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00 or $210 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 "DELUXE 7-11-21" Instant Game prize of $2,100 or $21,000, 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 "DELUXE 7-11-21" 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 "DELUXE 7-11-21" 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 "DELUXE 7-11-21" 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 7,080,000 tickets in the Instant Game No. 796. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 796 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	906,240	7.81
$3	269,040	26.32
$4	226,560	31.25
$7	127,440	55.56
$11	113,280	62.50
$21	56,640	125.00
$50	14,750	480.00
$210	5,192	1,363.64
$2,100	118	60,000.00
$21,000	13	544,615.38

*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 4.12. 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. 796 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. 796, 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-200702545
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 20, 2007

♦ ♦ ♦

Instant Game Number 805 "Top Prize $500,000"

1.0 Name and Style of Game.

A. The name of Instant Game No. 805 is "TOP PRIZE $500,000". The play style is "match 3 of 9".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 805 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 805.

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, $3.00, $4.00, $5.00, $6.00, $10.00, $20.00, $30.00, $60.00, $100, 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. 805 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$4.00	FOUR$
$5.00	FIVE$
$6.00	SIX$
$10.00	TEN$
$20.00	TWENTY
$30.00	THIRTY
$60.00	SIXTY
$100	ONE HUND
$50,000	YR/10 YRS

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 805 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
THR	$3.00
FOR	$4.00
FIV	$5.00
SIX	$6.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) 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: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $30.00, $60.00 or $100.

I. High-Tier Prize - A prize of $50,000/YR ($50,000 a year for 10 years).

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (805), 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: 805-0000001-001.

L. Pack - A pack of "TOP PRIZE $500,000" 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.

M. 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.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TOP PRIZE $500,000" Instant Game No. 805 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 "TOP PRIZE $500,000" Instant Game is determined once the latex on the ticket is scratched off to expose 9 (nine) Play Symbols. If a player reveals 3 (three) matching dollars amounts, the player wins that dollar amount. If a player reveals 3 (three) $50,000 dollar amount play symbols, the player wins $50,000 for 10 years. 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 9 (nine) 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 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 ticket will contain 4 or more like play symbols.

C. No three or more non-winning pairs on a ticket.

D. Tickets can only win once.

2.3 Procedure for Claiming Prizes.

A. To claim a "TOP PRIZE $500,000" Instant Game prize of $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00, $20.00, $30.00, $60.00 or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $60.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.D of these Game Procedures.

B. To claim a "TOP PRIZE $500,000" top level prize of $50,000/YR for 10 years, the claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. 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. When claiming a "TOP PRIZE $500,000" Instant Game prize of $50,000 a year for 10 years the claimant will receive,

1. Annually via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of $50,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made once a year on the first business day of the anniversary month of the claim. Annual payments will be made for a period of 10 years or a total of 10 annual to reach the total maximum payment of $500,000.

2. If a payment falls on a holiday or weekend, the payment will be made on the following business day.

D. As an alternative method of claiming a "TOP PRIZE $500,000" 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.

E. 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.

F. 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 "TOP PRIZE $500,000" 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 "TOP PRIZE $500,000" 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 30,000,000 tickets in the Instant Game No. 805. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 805 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	2,600,000	11.54
$2	3,000,000	10.00
$3	300,000	100.00
$4	200,000	150.00
$5	200,000	150.00
$6	150,000	200.00
$10	100,000	300.00
$20	50,000	600.00
$30	25,125	1,194.03
$60	9,500	3,157.89
$100	3,750	8,000.00
$500,000	5	6,000,000.00

*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 4.52. 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. 805 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. 805, 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-200702546
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 20, 2007

♦ ♦ ♦

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on June 13, 2007, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Comcast of Houston, LLC for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 34402 before the Public Utility Commission of 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 34402.

TRD-200702541
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 20, 2007

♦ ♦ ♦

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on June 15, 2007, 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 Grande Communications Networks, Inc. for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 34412 before the Public Utility Commission of 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 34412.

TRD-200702543

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 20, 2007

♦ ♦ ♦

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On June 13, 2007, VarTec Telecom filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60252. Applicant intends to reflect a change in ownership/control.

The Application: Application of VarTec Telecom for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 34399.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 5, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34399.

TRD-200702540
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 20, 2007

♦ ♦ ♦

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On June 14, 2007, Comtel Telcom Assets LP d/b/a Excel Telecommunications filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60228. Applicant intends to reflect a change in ownership/control.

The Application: Application of Comtel Telcom Assets LP d/b/a Excel Telecommunications for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 34403.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 5, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34403.

TRD-200702542
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 20, 2007

♦ ♦ ♦

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

Notice is given to the public of Dell Telephone Cooperative, Inc. (Dell Telephone) application filed with the Public Utility Commission of Texas (commission) on June 13, 2007, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Docket Title and Number: Application of Dell Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to Substantive Rule §26.171; Docket Number 34398.

The Application: Dell Telephone filed an application to increase its monthly recurring rates for Call Forwarding, Call Waiting, Speed Calling (8 and 30 Code) and Three-Way Calling services. Dell Telephone also intends to increase its Service Call and Returned Check rates. The proposed effective date for the proposed rate changes is October 1, 2007. The estimated annual revenue increase recognized by Dell Telephone is $7,386 or less than 5% of Dell Telephone's gross annual intrastate revenues. Dell Telephone has 850 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by the lesser of 5% or 1,500 of the affected local service customers to which this application applies by August 31, 2007, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by August 31, 2007. Requests to intervene should be mailed to the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 34398.

TRD-200702452
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 15, 2007

♦ ♦ ♦

Notice of Petition for Emergency Rulemaking

On June 13, 2007, the Public Utility Commission of Texas (commission) received a petition for emergency adoption of a commission rule and request for expedited open meeting consideration.

Project Title and Number: Petition of the Office of the Public Utility Counsel of Texas to Adopt Emergency and Permanent Customer Protection Rules; Project Number 34400.

Summary of Petition: On June 13, 2007, the Office of the Public Utility Counsel for Texas; AARP Texas; Texas Ratepayers Organization to Save Energy (TX ROSE); and the Texas Legal Services Center (TLSC), Public Citizen, Association of Community Organizations for Reform Now (ACORN), and Texas Association of Community Action Agencies (OPC and Consumer Groups) filed a petition with the Public Utility Commission of Texas (commission) pursuant to P.U.C. Procedural Rule §22.283. The petition is for Emergency Adoption of Substantive Rule §25.50 as approved at the July 20, 2006 Open Meeting, pursuant to P.U.C. Procedural Rule §22.283, and for Rulemaking to Modify Specific Substantive Rules to implement customer protection provisions of Senate Bill (SB) 482 in accordance with P.U.C. Procedural Rule §22.281. OPC and Consumer Groups respectfully request expedited adoption by the commission of P.U.C. Substantive Rule §25.50. OPC and Consumer Groups asserted that this rule to suspend disconnection of electric service for low-income elderly consumers and critical care Texas electric consumers is essential to protect health and safety. Additionally, OPC and Consumer Groups filed this pleading as a petition

for a rulemaking to modify certain current commission rules, consistent with customer protection provisions of SB 482 and pursuant to P.U.C Procedural Rule §22.281 in order to provide for the commission to adopt permanent rules designed to accomplish the following: (1) protect certain at-risk customer classes from disconnection during time periods in which extreme weather conditions are likely to occur; (2) provide a waiver for security deposits for low-income residential customers 65 and over; and (3) and prohibit the imposition of certain cancellation fees.

Comments on the petition may be submitted to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Sixteen copies of comments to the proposed emergency rule are required to be filed pursuant to P.U.C. Procedural Rule §22.71(c). All comments should refer to Project Number 34400.

To obtain further information interested persons may call the commission 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.

TRD-200702552
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 20, 2007

♦ ♦ ♦

Texas Council on Purchasing from People with Disabilities

Notice of Contract Execution

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Council on Purchasing from People with Disabilities (TCPPD) announces the execution of a contract for Central Non-Profit Agency Services as solicited in Request for Proposal #303-7-10740, which was awarded to TIBH Industries, Inc. by vote of the TCPPD at its quarterly meeting held on March 23, 2007 and which was executed by the TCPPD at its quarterly meeting held on June 15, 2007.

For further information contact TCPPD, Attention: Kelvin Moore, (telephone) (512) 463-3244, (fax) (512) 236-6184, or (e-mail) kelvin.moore@tbpc.state.tx.us.

TRD-200702470
Susan Maldonado
Acting General Counsel
Texas Council on Purchasing from People with Disabilities
Filed: June 15, 2007

♦ ♦ ♦

Request for Comment Regarding the Management Fee Rate Charged by TIBH Industries, Inc. (Central Nonprofit Agency)

Notice is hereby given that the Texas Council on Purchasing from People with Disabilities (Council) will review and approve the management fee rate charged by the central nonprofit agency, TIBH Industries Inc., for its services to the community rehabilitation programs (CRPs) for Fiscal Year 2008 as required by §122.019(e) of the Texas Human Resources Code. This review will be conducted at the Council's meeting on Friday, September 21, 2007. The Council's meeting will be held at 1400 North Congress Ave., Capitol Extension, Austin, Texas, Room E2.026. TIBH Industries Inc. has requested that the Council set the management fee rate at 6.25% of the sales price for products, 6% of the contract price for services and 5% for Temporary Services. The Council seeks public comment on TIBH Industries Inc. management fee rate request as required by §122.030(a) - (b) of the Texas Human Resources Code.

Comments should be submitted in writing on or before Friday, September 7, 2007 to Kelvin Moore of the Texas Council on Purchasing from People with Disabilities, 1711 San Jacinto Blvd., Austin, Texas 78711.

For all other questions or comments, contact the Texas Council on Purchasing from People with Disabilities at (512) 436-3244. In addition, hearing and speech impaired individuals with text telephones (TTY) may also contact the Council on Purchasing from People with Disabilities at (512) 463-3244.

TRD-200702530
Susan Maldonado
Acting General Counsel
Texas Council on Purchasing from People with Disabilities
Filed: June 19, 2007

♦ ♦ ♦

Request for Comment Regarding the Services Performed by TIBH Industries, Inc.

Notice is hereby given that the Texas Council on Purchasing from People with Disabilities (Council) intends to review the services provided by the central nonprofit agency, TIBH Industries Inc., for Fiscal Year 2007 as required by §122.019(c) of the Texas Human Resources Code. This review will be considered at the next Council meeting on Friday, September 21, 2007. The Council's meeting will be held at 1400 North Congress Avenue, Capitol Extension, Austin, Texas, Room E2.026. The Council requests that interested parties submit comments regarding the services of TIBH Industries Inc. in its operation of the State Use Program, under §122.019(a) - (b) of the Texas Human Resources Code.

Comments should be submitted in writing on or before Friday, September 7, 2007 to Kelvin Moore of the Texas Council on Purchasing from People with Disabilities, 1711 San Jacinto Boulevard, Austin, Texas 78711.

For all other questions or comments, contact the Texas Council on Purchasing from People with Disabilities at (512) 436-3244. In addition, hearing and speech-impaired individuals with text telephones (TTY) may also contact the Council on Purchasing from People with Disabilities at (512) 463-3244.

TRD-200702469
Susan Maldonado
Acting General Counsel
Texas Council on Purchasing from People with Disabilities
Filed: June 15, 2007

♦ ♦ ♦

Texas Department of Transportation

Invitation for Bid - Private Consultant Services

The Texas Department of Transportation (department) announces an Invitation for Bid (IFB) for private consultant services pursuant to Government Code, Chapter 2254, Subchapter B. The term of the contract will be from project initiation to 6 months later. The Public Transportation Division (division) of the department will administer the contract. The IFB will be released on June 29, 2007 and is contingent upon the finding of fact from the Governor's Office.

Purpose: The intent of the division and this IFB is to procure the professional services of a consultant to conduct an on-site safety and se-

curity review of the Metropolitan Transit Authority of Harris County (METRORail) rail fixed guideway system in accordance with the Federal Transit Administration of 49 CFR Part 659.29 and the department's System Safety and Security Program Standard. At the conclusion of the on-site review, the consultant must prepare and issue a report containing findings and recommendations resulting from that review which includes an analysis of the effectiveness of the System Safety Program Plan and the System Security Plan and a determination of whether either should be updated. The consultant must work with the METRORail to resolve all outstanding issues resulting from the review within 90 working days of the conclusion of the on-site review.

Eligible Applicants: Eligible applicants include, but are not limited to, organizations that provide private consulting services.

Program Goal: an on-site safety and security review of the METRORail guideway system.

Review and Award Criteria: Each application will first be screened for completeness and timeliness. Proposals that are deemed incomplete or arrive after the deadline will not be reviewed. A team of reviewers from the division will evaluate the proposals as to the private consultant's competence, knowledge, and qualifications and as to the reasonableness of the proposed fee for the services. The criteria and review process are further described in the IFB.

Deadlines: Proposals must be prepared according to instructions in the IFB package and received by the department before 3:00 p.m. on August 6, 2007.

To Obtain a Copy of the IFB: Requests for a copy of the IFB should be submitted to Susan Hausmann, Texas Department of Transportation, Public Transportation Division, 125 East 11th Street, Austin, Texas 78701-2483. Telephone (512) 416-2833.

Copies will also be available on the department's Public Transportation Division web page at

http://www.dot.state.tx.us/services/public_transportation/default.htm.

TRD-200702536
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 20, 2007

♦ ♦ ♦

Public Hearing Notice - Statewide Transportation Improvement Program

In accordance with 43 TAC §15.8(d), the Texas Department of Transportation (TxDOT) will hold a public hearing on Tuesday, July 31, 2007, at 11:00 a.m. at the Texas Department of Transportation, 200 East Riverside Drive, Room 1A-2, Austin, Texas to receive public comments on the Statewide Transportation Improvement Program (STIP) for FY 2008-2011. The STIP reflects the federally funded transportation projects in the FY 2008-2011 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP will include both state and federally funded projects for the nonattainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135, as amended by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), the Transportation Equity Act for the Twenty-first (21st) Century (TEA-21), and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), require each designated MPO and the state, respectively, to develop a TIP as a condition to securing federal funds for the next four years for transportation projects under Title 23 or the Federal Transit Act (49 USC 5301, et seq.).

Section 134(h) requires an MPO to develop its TIP in cooperation with the state and affected public transit operators; to provide citizens, affected public agencies, representatives of transportation agency employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transit, and other interested parties with a reasonable opportunity to comment on the proposed TIP; and further requires the TIP to be updated at least once every four years and to be approved by the MPO and the Governor or Governor's designee. Section 135(f) requires the state to develop a STIP for all areas of the state in cooperation with those designated MPO's, and further requires that citizens, affected public agencies, representatives of transportation agency employees, freight shippers, private providers of transportation, providers of freight transportation services, representatives of users of public transit, and other interested parties, be provided with a reasonable opportunity to comment on the proposed STIP.

A copy of the proposed FY 2008-2011 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, and on TxDOT's website at:

www.dot.state.tx.us

Persons wishing to review the STIP may do so online or contact the Transportation Planning and Programming Division at (512) 486-5023.

Persons wishing to speak may register in advance of the hearing by notifying Michelle Conkle, Transportation Planning and Programming Division, at (512) 486-5023 not later than Friday, July 27, 2007, or they may register at the hearing location beginning at 10:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing, however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact Randall Dillard, Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 305-9137. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Further information on the FY 2008-2011 STIP may be obtained from Michelle Conkle, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704, (512) 486-5023. Interested parties who are unable to attend the hearing may submit comments to James L. Randall, P.E., Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78703. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by August 15, 2007, at 4:00 p.m.

TRD-200702507

Bob Jackson
General Counsel
Texas Department of Transportation
Filed: June 18, 2007

♦ ♦ ♦

Request for Proposal - Private Consultant Services

The Texas Department of Transportation (department) announces a Request for Proposal (RFP) for private consultant services pursuant to Government Code, Chapter 2254, Subchapter B. The term of the contract will be from project initiation to 36 months later. The Maintenance Division (division) of the department will administer the contract. The RFP will be released on July 2, 2007 and is contingent upon the finding of fact from the Governor's Office.

Purpose: The intent of the division and this RFP is to procure a consultant to support the Compass Project through the implementation of a new Maintenance Management System (MMS). The consultant will support the division during the pre-procurement and post-procurement phases and will provide expertise, advice, and recommendations to the project management team. The consultant will advise on vendor evaluation, assist with project plan monitoring, help clarify requirements, and work with project focus groups through the business process definition. The consultant will provide assistance to the division throughout the life cycle of the Compass Project.

Eligible Applicants: Eligible applicants include, but are not limited to, organizations that provide private consulting services.

Program Goal: The successful implementation of a new MMS.

Review and Award Criteria: Each application will first be screened for completeness and timeliness. Proposals that are deemed incomplete or arrive after the deadline will not be reviewed. A team of reviewers from the division will evaluate the proposals as to the private consultant's competence, knowledge, and qualifications, and as to the reasonableness of the proposed fee for the services. The criteria and review process are further described in the RFP.

Deadlines: Proposals must be prepared according to instructions in the RFP package and received by the department before 5:00 p.m. on July 31, 2007.

To Obtain a Copy of the RFP: Requests for a copy of the RFP should be submitted to Brandye Payne, Texas Department of Transportation, Maintenance Division, 125 East 11th Street, Austin, Texas 78701-2483. Telephone (512) 416-3191. Fax (512) 416-2941.

Copies will also be available on the department's Maintenance Division web page at

http://www.dot.state.tx.us/mnt/contract/rfp.htm

or

http://www.dot.state.tx.us, Select About Us, Organizational Chart, Divisions, Maintenance, Request for Proposals/Qualifications.

TRD-200702535
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 20, 2007

♦ ♦ ♦

Waller County

County Commissioners Court Notice of Intent

The Commissioners Court of Waller County, pursuant to the Texas Administrative Code, hereby gives notice of its intent to request a Department of Aging and Disability Services contract for additional nursing home beds under the state Medicaid program in Waller County with regards to Texas Administrative Code on rural county waiver.

The Commissioners Court hereby requests that interested parties submit comments on whether the request should be made. Further, the Commissioners Court requests proposals from persons interested in providing additional Medicaid beds in the County, including persons providing Medicaid beds in a nursing home facility with a high occupancy rate.

Interested parties must forward comments or proposals to be received no later than July 30, 2007, at 10:00 a.m. to the Waller County Auditor's Office, 836 Austin Street Room 221, Hempstead, Texas 77445. Proposals shall be discussed in open Commissioners Court on August 2, 2007, at 9:00 a.m. at the County Annex Building, Hempstead, Texas.

If the Commissioners Court determines to proceed with a request after considering all comments and proposals received, it may recommend that the Department of Aging and Disability Services contract with a specific nursing facility that submitted a proposal. In making its decisions, the Commissioners Court must consider:

1. The demographic and economic needs of the county;

2. The quality of existing nursing facility services under the state Medicaid program in the county;

3. The quality of the proposals submitted; and

4. The degree of community support for additional nursing facility services.

TRD-200702423
Owen Ralston
Waller County Judge
Waller County
Filed: June 14, 2007

♦ ♦ ♦

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 30 (2005) is cited as follows: 30 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 "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 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 (800) 226-7199.

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 (1-800-356-6548), and West Publishing Company (1-800-328-9352).

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*** (January 21, April 15, July 8, and October 7, 2005). 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).